



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2021-001092
FtT No: EA/05622/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 11 April 2023**

Before

**MR C M G OCKELTON, VICE PRESIDENT &
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

ENTRY CLEARANCE OFFICER

Appellant

and

AYUB ADNAN

Respondent

For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer
For the Respondent: Mr M Iqbal, OISC representative

Heard at Edinburgh on 7 February 2023

DECISION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant is a citizen of Pakistan, born on 3 April 1989. On 23 March 2021 the ECO refused his application for an EEA family permit to join his brother, Mr Irfan Begum ("the sponsor"), as an extended family member under regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the Regulations").
3. The ECO's decision declines to find the evidence adequate to show dependency of the appellant on the sponsor. It also queries the sponsor's ability to support the appellant in the UK, in addition to himself and other family members, "without further recourse to public funds".
4. FtT Judge Green allowed the appellant's appeal by a decision promulgated on 27 October 2021. At [12], the Judge identified the issue as "whether the appellant is dependent upon the sponsor for his essential needs". At [32] he concluded that the sponsor "... has been supporting the appellant financially for many years. He

can afford to do this given his income and expenditure ... without this financial support [the appellant] would not be able to meet his essential living needs”.

5. The ECO applied for permission to appeal to the UT, on these grounds:

The FTTJ fails to adequately resolve whether the Appellant will be maintained without recourse to public funds. The Sponsor is receiving child benefit and universal credits, he also supports his father, wife and five children.

To support the Appellant in addition is not a sustainable practice especially as the cost of supporting the Appellant in the UK will be significantly higher.

The FTTJ has failed to evaluate the accommodation, the Sponsor has eight people living in rented accommodation.

Relevant paragraphs are Regulation 13 (3), public funds and 12 (4)(c) accommodation - *‘in all the circumstances’*.

6. On 25 November 2021, Designated FtT Judge Woodcraft granted permission on the view of arguable error “in accepting that the sponsor can support the appellant using public funds”.

7. Mr Mullen referred us to regulation 13, Initial right of residence, sub-paragraph (3):

An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance scheme of the UK does not have a right to reside under this regulation.

8. Mr Mullen did not resile from the grounds, but he acknowledged that he was in difficulty in deriving from them any legal error by the Judge in resolving the case.

9. We indicated that the ECO’s appeal did not succeed.

10. The ECO’s decision fails to say where the criterion of “further resort to public funds” derives from, and what it might mean.

11. We note that the appellant put his case in the FtT along the lines that his sponsor could maintain and accommodate him without further recourse to public funds, and that on entry he would be able to work and support himself. This was not the focus in the FtT, where the ECO was unrepresented, but it appears broadly to have been accepted by the Judge.

12. The grounds of appeal to the UT are also opaque.

13. The terms of regulation 13 (3), “an unreasonable burden on the social assistance scheme of the UK”, are broad, and not of obvious direct application to the facts of this case. We have not been directed to any refinement of regulation 13 (3). We have not been directed to any test or definition of “further recourse to public funds”.

14. The other citation in the grounds, regulation 12 (4) (c), is irrelevant. That provision says nothing about accommodation.

15. The ECO’s grounds do not focus anything by which the Judge’s resolution of the case before him might have involved the making of an error on a point of law.

16.The ECO's appeal is dismissed. The FtT's decision stands.

17.No anonymity order has been requested or made.

Hugh Macleman

Judge of the Upper Tribunal, Immigration and Asylum Chamber
8 February 2023