



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

**Case No: UI-2022-002498**  
**First-tier Tribunal No:**  
**EA/06537/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 31 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MUHAMMAD SAAD NAVEED**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Bibi – Sponsor.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 23 May 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 27 December 2003. He was represented before the Tribunal by Mr Faisal Aslam Bibi, his uncle, a Spanish national who has been exercising treaty rights in the United Kingdom since around January/February 2021.
2. The appellant made an application for an EEA Family Permit as the extended family member of Mr Bibi ('the Sponsor') under Regulation 8 of the Immigration (European Economic Area) Regulations 2016.
3. The Entry Clearance Officer (ECO) refused the application in a decision dated 14 January 2021 for the following reasons:

....

On your application you state that you are financially dependent on your sponsor. As evidence of this you have provided money transfer remittance receipts from your sponsor with three transfers in 2019 in August, October and December. There is then a gap of seven months before the next transfer dated 27 July 2020, with further transfers

dated 13 October, 12 November and 2 December 2020. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor.

I note that there is no correlation between the money transfers receipts provided and any outgoing funds from your sponsor's bank account. As such the source of funds for these transfers is called into doubt.

It is also noted that you have not provided any evidence regarding your own financial situation. In the absence of this evidence this department cannot sufficiently establish your dependency, either wholly or partly, upon your EEA sponsor because we are unable to establish if you need the financial support from the EEA national to meet your essential needs.

As evidence in support of your application you have provided a bank statement in the name of your sponsor. It is noted that for the period shown for this account that your sponsor's bank account was in frequently in deficit and was funded by an overdraft.

It is also noted that the length of time your sponsor has been resident in Spain has not been evidenced. As such it has not been possible to fully consider the circumstances of your sponsor's residence in that country.

On the evidence submitted in support of your application and on the balance of probability and therefore not satisfied that you are an extended family member in accordance with Regulation 8 (2) of the Immigration (European Economic Area) Regulations 2016.

I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all the requirements of regulation 12 (see ECGs EUN2.23 of the Immigration (European Economic Area) Regulations 2016

4. The appellant was therefore aware of the concerns of the ECO in relation to the lack of evidence and had the opportunity to provide any documentary evidence he was seeking to rely upon in accordance with the directions.
5. In addition to the documents filed the Judge had the benefit of seeing and hearing the Sponsor give oral evidence, which the Judge summarises between [12 - 18] of the decision under challenge. The Judge noted, in particular, at [15], that the appellant's father has agricultural land and sold crops to support his wife and four other children, the appellant's siblings being a younger brother, younger sister and two unmarried older sisters, and that it was stated that only the appellant and his younger brother attended school/college.
6. The Judge sets out his findings of fact from [21] of the decision under challenge. The Judge was satisfied the Sponsor had been sending the appellant funds on the dates identified at [28] of the decision, but noted the issue was whether the funds were for the appellant's essential needs [29]. In relation to that issue the Judge writes:
  30. Lacking in the bundle was any evidence about the Appellant's family's circumstances. There was no statement from the Appellant's father about his financial circumstances or why he was able to support the rest of the family but not the Appellant. There was no statement or financial information from the Appellant's father or from the Appellant himself for that matter over and above what I have specifically referred to above and what was contained in the bundle.
  31. The evidence of financial support was sporadic and whilst I accept funds had been sent since August 2021 that did not alter the fact there was a lack of documentary evidence about the Appellant's and his family's general circumstances. The guidance makes it clear that this is something to take into account when considering this very issue.

32. I therefore find that although monies were sent to the Appellant I am not satisfied they were for the Appellant's essential needs and consequently I do not allow this appeal under the Regulations.DECISION
33. I dismiss the appeal under the 2016 Regulations.
7. The appellant sought permission to appeal arguing that the Judge had erred in law in assessing the evidence, and in particular in failing to explain why he rejected the evidence given by the sponsor during the hearing. The grant of permission refers to the Judge finding that the sponsor had been sending money to the appellant but being influenced by the lack of documentary evidence regarding the family's general circumstances, in failing to explain why he felt unable to accept the oral evidence given by the sponsor on that issue, and arguably erred in not doing so.
8. In her Rule 24 response dated 19 June 2022 the ECO opposes the appeal, arguing the Judge directed himself properly that the appeal should be dismissed.

### **Discussion and analysis**

9. It is not made out the Judge failed to consider the evidence with the required degree of anxious scrutiny. The Judge had in addition to the documentary evidence the oral evidence of the Sponsor. Despite it being clear from the refusal that the issue of concern was the lack of suitable evidence to prove what was being claimed, the Judge finds that there was still insufficient evidence.
10. The Judge was not required to accept what the Sponsor was saying in relation to the family circumstances, without more. The Judge clearly undertook the required holistic assessment of the evidence. The Judge was entitled to find a lack of evidence in the bundle about the appellant's family circumstances especially in light of there being no evidence from the appellant's father.
11. The Judge did not err in law in considering the ECO guidance which was relevant to the issue. If the evidence had shown that, notwithstanding the appellant's father being a farmer, there was insufficient from the sale of his crops or elsewhere to meet the essential needs of the family, as a result of which the appellant's essential needs could not be met without the remittances from the Sponsor, the Judge's findings may have been shown to be infected by material legal error. The problem for the appellant is that such evidence had not been produced. In particular, there was nothing from the appellant's father confirming what the family financial circumstances are. If the income received from the farm is sufficient to meet the essential needs of all the family unit, even if the Sponsor is making remittances they would not be needed to enable the appellant to meet his essential needs, as they are met elsewhere. It is the lack of evidence on that key point which troubled the Judge.
12. The Tribunal is grateful for the Sponsor attending the hearing and doing his best to try and assist in this appeal but the difficulty for the appellant is that there is nothing in the evidence, which I have considered in detail, that shows the Judge's findings on this particular point are incorrect or outside the range of findings reasonably open to the Judge on the evidence.
13. It was found the Sponsor is making payments by way of remittances to the family in Pakistan which is not disputed. It is settled law that that is not, per se, sufficient. It is a fundamental requirement that it is shown such remittances are required for an individual's essential needs. That was not made out.
14. The grounds seeking permission to appeal also failed to deal with the other aspect of the ECO's refusal in which it was found that the appellant was not able to meet all the requirements of regulation 12. The relevant part of that regulation reads:

- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
- (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
  - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
  - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.
15. The finding of the Judge that the appellant had not established he is an extended family member (as that term is defined in the Regulations) has not been shown to be a finding outside the range of those available to the Judge on the evidence.
16. Even if the appellant had furnished sufficient evidence it is clear that the ECO had genuine concerns about the ability of the Sponsor to be able to afford to support the appellant in light of his own financial circumstances. An extended family member has not right to be granted a family permit, as whether they are is at the discretion of the Member State. In this appeal the ECO was not willing to exercise discretion in favour of the appellant.
17. I find the appellant has failed to establish legal error material to the decision to dismiss the appeal. On that basis there is no jurisdiction for the Upper Tribunal to interfere any further in this matter.

**Notice of Decision**

18. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 May 2023**