



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

**Case Nos: UI-2022-000078, UI-  
2022-000079,  
UI-2022-000080, UI-2022-000083,  
UI-2022-000085**

**First-tier Tribunal Nos:  
EA/51062/2021, EA/51063/2021,  
EA/51064/2021,  
EA/51065/2021, EA/51066/2021**

**IA/04495/2021 & Others**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 02 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**NASIR AZAM  
SHARMAILA SADIQ  
MARYAM NASIR  
RABAIL NASIR  
BUSHRA NASIR  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Z Raza, Counsel, instructed by Abbey Law Solicitors  
For the Respondent: Ms S Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 12 May 2022**

**DECISION AND REASONS**

1. The appellants are closely related. Two of them are married to each other and the other three are their minor children. They are citizens of Pakistan. They appeal against the decision of the First-tier Tribunal dismissing their appeal against a decision of the respondent refusing them a residence card confirming their right to reside in the United Kingdom as an extended family member of an EEA national.
2. The point of dispute was whether they could in fact show they were dependent on the EEA national. The Secretary of State, and in due course First-tier Tribunal, decided that they could not.
3. Broadly two points are taken against the First-tier Tribunal Judge. Firstly, it is said that he referred to a non-existent bundle. On the face of it that appears to be right but I cannot find that to be more than an opportune effort on the part of the appellants to make a point out of what is clearly a minor act of carelessness. There were extensive papers in this case and annotations indicating that the judge has looked at and considered them, although there is not one bundle that can be identified in accordance with the First-tier Tribunal Judge's description. There really is nothing in that point.
4. The second is that the judge did not direct himself at any stage on the appropriate burden of proof. That is potentially a very serious error. However, some common sense can be exercised. These are civil proceedings. The standard of proof is the balance of probabilities. This is well-known to the judge who is experienced. Just in case this rather obvious point had eluded him completely he is reminded of it in the respondent's review. If it were suggested that the judge had for some unfathomable reason decided he had to apply the high criminal standard and there was evidence to substantiate that claim I would be very concerned but there is not.
5. If, equally bizarrely, the judge had decided this was a case for the low "real risk standard" appropriate in protection claims, again I would be concerned although that would of course advantage the appellant's rather than the respondent.
6. However, I am not prepared to assume that an experienced judge has not applied the standard of proof that applies in the huge majority of all civil proceedings throughout the jurisdiction simply by reason of his failure to mention it precisely although it would have been a very good idea if he had.
7. Of particular concern to me is the nature of the gaps in the evidence and it is my view, having considered everything, that it cannot be said that the omission is material on the facts of this case.
8. The respondent's reasons for refusing an EEA family permit are set out in a Notice of Immigration Decision dated 9 March 2021. In summary they are that the evidence of dependency only covered the four months before the application even though the sponsor had resided in the United Kingdom since 2005, that unparticularised and unexplained occasional cash payments sent to Pakistan with relatives cannot be identified or relied upon and, and I set it out below because I consider this to be particularly important:

"I would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met".

9. In other words, it was plain from anyone considering the Secretary of State's Reasons for Refusal that the appellants, amongst other apparent deficiencies, had failed to show that any money that was sent was to answer dependency rather than simply constitute welcome enrichment.
10. This point was not lost on the judge. I consider in some detail his Decision and Reasons.
11. At paragraph 10 of the Decision and Reasons where he set out what had to be proved the Judge said:

"The family's income, expenditure and evidence of their financial position, which would prove that without the financial support of their sponsor their essential living needs could not be met, needed to be set out."
12. The judge expressly noted evidence from the sponsor that he did not support his relatives in the United Kingdom when he arrived in 2005. The need to do that came, he said, when his uncle and family became unwell. Initially there were cash payments sent on an ad hoc basis, then more regular payments were made. The judge noted how Mr Muquit strove to argue that there was no real doubt that the money was sent or that the family in Pakistan had been unhealthy and no real reason to suspect that they received any income that they might be hiding from another source. The judge was not so easily persuaded. He said at paragraph 20:

"It is true that there is much evidence before us. But crucial evidence is lacking."
13. The judge then noted how the:

"appellants' family's stated income and expenditure is not properly evidenced in documentary form. Such documents as there are, do not establish that the Appellant family's essential needs are being met by the sponsor, whether wholly or in part."
14. He also found it important that there was no paper chain whereby payments from the United Kingdom could be traced into bank accounts in Pakistan. The judge found the evidence that the cash was actually received for any purpose inadequate. He explained at paragraph 28 that the appellants had not shown that without the financial support they would not be able to meet their essential needs.
15. Before me Mr Raza took me through the evidence including evidence not commented upon particularly by the judge. However, what he could not do is show me from the bundle anything that actually showed need on the part of the

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appellants. He could make some progress showing that money had been sent from the United Kingdom but that is not the point. It is necessary but it is only half the story. He was right to remind me that there is no proscribed evidence in appeals of this kind. However and with respect, he cannot get round the gap that was concerning to the Secretary of State when the application was refused and concerning to the Judge of the First-tier Tribunal. There is very little, if any, evidence about the means of the family in Pakistan. The judge was entitled to take the point that he did. The appellants were on notice that the point had to be covered and they did not cover it and this is not a point that is impacted by the burden of proof which I am satisfied the judge applied correctly anyway, standard of proof. It is a gap in the evidence which the appellants have not filled.

16. There is no material error of law here and I dismiss each of these appeals.

**Jonathan Perkins**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
Dated 31 January 2023