



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2022-001035**

First Tier No:

EA/03363/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7 August 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

BABAR ALI

(NO ANONYMITY ORDER MADE)

and

Entry Clearance Officer

Appellant

Respondent

Representation:

For the Appellant: Mr Khan
For the Respondent: Mr Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 1 June 2023

DECISION AND REASONS

1. At an initial hearing, I found that the First-tier Tribunal had erred in law and I set aside its decision. My reasons were as follows:

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal. The appellant is a male citizen of Pakistan who was born on 12 November 1999. He appealed against a decision of the Secretary of State dated 25 January 2021 to refuse to grant him an EEA Family Permit to come to the UK as the claimed Extended Family Member (EFM) of an EEA national (his brother, Qamar Ahsan Ali, hereafter referred to as the sponsor). In the decision promulgated on 3 December 2021, the First-tier Tribunal allowed the appeal. the Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The grounds are brief and I set these out below in full:

1. Making perverse or irrational findings on a matter or matters that were material to the outcome.

a) At [27] of the determination the FTTJ states the following: [my emphasis]

In general, there is no proper basis on which I could reject the evidence given by the sponsor on 5 October. But that said, the appellant's case is not wholly without its difficulties - for example, I found unrealistic the sponsor's assertion that if he was not sending money specifically to the appellant, the appellant would not otherwise be provided with food and accommodation. As referred to further below, the appellant is one of four brothers still based in Pakistan, and at least two of the others have income from employment coming in. I do not think it is realistic to claim that the appellant would not be accommodated and fed within the extended family household if the sponsor was to stop sending money to him.

b) It is therefore submitted that the FTTJ has found that the appellant is not dependent on the sponsor to meet his essential needs, as he can rely on his brothers to provide him with food and accommodation. However, at [37] the FTTJ finds the following:

Having heard the sponsor's oral evidence (and compared that evidence with the information in the papers), I accept it as established that the appellant cannot meet his essential living needs without the financial support of the sponsor.

c) It is submitted that the FTTJ's conclusions at [37] contradict those made at [27] of the determination. It is therefore submitted that the FTTJ's findings as to the appellant's dependency are made on an irrational basis.

2. Making a material misdirection of law on any material matter.

a) It is respectfully submitted that the FTTJ's findings that the appellant is dependent on the EEA sponsor to meet his essential needs fails to correctly adhere to the findings of the Court of Appeal in *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383 which at [35] states the following:

In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.

b) It is submitted that the FTTJ's findings at [27] of the determination are that the Appellant is not reliant on the sponsor to meet his essential needs, as they can be and are met from his two brothers in Pakistan. Therefore the additional resources provided by the sponsor, are not required to meet his essential needs, which can be met by relatives in Pakistan. Therefore, it is submitted that the FTTJ has materially erred in law by finding that the appellant's dependency on the EEA sponsor is established.

3. A further issue became apparent in Mr Bates's oral submissions. There is letter (which is barely legible) addressed 'To whom it may concern' at [19] of the appellant's bundle of documents before the First-tier Tribunal which seems to have been written by the principal of the appellant's college. It states that the appellant's United Kingdom sponsor has supported the appellant at the college by paying his fees. The dates of the

college course cannot be read. The appellant's student identity card at the college (the Punjab College of Science) at [20] is for the college year 2016-2017. Mr Bates quite properly did not submit that the appellant had failed to prove that he is still a student (such an allegation is not made in the grounds of appeal) but he did raise more generally the role which the fees for the appellant's education play in this appeal. In Singh [2022] EWCA Civ 1054, the Court of Appeal considered education at [23]:

The question whether education is in general capable of constituting an essential need was not before the FTT nor is it in issue before us now, given that both parties agree that education is, in principle, capable of constituting an essential need but may not always be so. I agree. This is not the occasion to conduct a wide ranging examination of the position of education in the assessment of essential needs.

Mr Bates submitted that the judge had failed to consider whether, on the facts, the appellant's education was an essential need. Moreover, that failure compounded the problems caused by the judge's failure to resolve the tension between the findings he made at [27] and [37] (see (10) above).

4. If the judge considered that the appellant's education constituted an essential need in this instance, he has failed to say so. As the Court of Appeal in Singh found, education can constitute an essential need but its nature must be considered on the facts in every case. If, on the facts in this case, education is an essential need, then the appellant may be able to show that, when accommodation food and education are considered holistically as essential needs, then he is in need of the assistance provided by the United Kingdom sponsor to meet those needs. However, since the judge has not engaged with these issues, the contradiction between the findings has makes at [27] (that the appellant does not rely on the sponsor for his needs save for his education) and [37] (that 'that the appellant cannot meet his essential living needs without the financial support of the sponsor') remains unresolved. The judge has described the appellant's case as being 'not wholly without its difficulties' [27] because he had 'found unrealistic the sponsor's assertion that, if he was not sending money specifically to the appellant, the appellant would not otherwise be provided with food and accommodation.' However, at [32], the judge found as a fact that 'I accept what the sponsor says in his statement (and said at the hearing) as to him financially supporting the appellant since their father died'. This begs the question: is the appellant 'dependent in the sense of being in need of the assistance' (to use the expression employed by the Court of Appeal in Lim [2015] EWCA Civ 1383 at [29]) on funds sent to Pakistan by the sponsor? In my opinion, the answer cannot be ascertained from a reading of the First-tier Tribunal's decision.

5. Accordingly, I find that the judge erred in law such that his decision should be set aside. Having regard to the recent Presidential guidance in Begum [2023] UKUT 00046 (IAC), the decision shall be remade in the Upper Tribunal following a hearing de novo. None of the findings of fact of the First-tier Tribunal shall stand.

6. I anticipate that the respondent will seek evidence that the appellant was and is in education at all material times (see (2) above). The parties may adduce fresh evidence provided copies of any documentary evidence (including witness statements) are sent to the other party and to the Tribunal no less than 10 days before the next hearing. The application must file at the Upper Tribunal and serve on the other party a consolidated bundle of evidence and must make fresh copies of those documents in the First-tier Tribunal bundle which are illegible or difficult to read (see (2) above).

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The decision shall be remade in the Upper Tribunal following a resumed hearing.

Listing Directions: List for resumed hearing on first available date at Manchester Civil Justice Centre: Before Upper Tribunal Judge Lane: 2 hours allowed: The parties may adduce fresh evidence provided copies of any documentary evidence (including witness

statements) are sent to the other party and to the Tribunal no less than 10 days before the next hearing: Urdu interpreter.

2. The resumed hearing took place at Manchester on 1 June 2023. I received a bundle of documents from the appellant's solicitor. I heard oral evidence from the sponsor, Qamar Ahsan Ali (hereafter 'the sponsor') who adopted his written evidence, including his statement of 31 May 2023.. Having heard the submissions of the representatives of both parties, I reserved my decision.
3. The appellant must satisfy the provisions of Regulation 8 of the 2016 Immigration (European Economic Area) Regulations (as amended):

Regulation 8 — "Extended family member" "

(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (1A), (2), (3), (4) or (5). [(1A) not relevant]

(2) The condition in this paragraph is that the person is— a relative of an EEA national; and residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either— is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or (ii) []".

4. The burden of proof is on the appellant and the standard of proof is the balance of probabilities. I have taken all the written and oral evidence into account before reaching my decision. The fact that I may not have referred to a specific item of evidence should not be taken as indicating that I have ignored that or any relevant item of evidence.
5. The evidence adduced by the appellant was, in my opinion, inadequate to enable him to discharge the burden of proof. First, the appellant appeared to have made no attempt to obtain evidence from his family members (two of whom are in paid employment) other than the sponsor. Other than the sponsor, the appellant has three brothers and his mother living in Pakistan. It was striking that there was no evidence from those family members explaining not only why they could not assist the appellant (who claims to rely wholly on the sponsor to satisfy his essential needs) but also detailing the extent to which household expenses are shared or divided between the family members. I find it difficult to accept that there is no sharing of resources and costs by the appellant and the family members with whom he shares a home in Pakistan.
6. Secondly, the appellant claims to be a student but it was again striking that the sponsor, who it is claimed enabled the appellant to continue his studies for 5-6 years, appeared to know nothing about the course studied by the appellant or any qualification he may have obtained. Given the reasons which I have given (see above) for finding that the previous Tribunal had erred in law, it is extraordinary that the appellant has not taken the opportunity since the initial hearing to file and serve new evidence regarding his education.
7. Mr Bates, for the Entry Clearance Officer, accepted that evidence post dating the appellant's application (December 2020) could, in principle, cast light on the nature of the appellant's circumstances as at the date of the application. However, he submitted that such evidence together with evidence which showed regular payments by the sponsor to the appellant fell short of discharging the burden of proof where there existed so much uncertainty as to the appellant's circumstances (in particular, concerning his improbably long time spent as a

student) and the role in the appellant's support of other family members. I agree with that submission. I have concluded that the appellant has chosen not to adduce evidence on these matters because it would not corroborate what he has said about his circumstances or the contribution of his family.

8. Such third party evidence which the appellant has adduced carries little probative weight. At [121] in the appellant's bundle of documents, there is a letter purporting to be from Tehsil Kharlan District Council, in the jurisdiction of which the appellant and his family live, which asserts that the appellant 'has no income and [is] supported by family members from abroad [i.e. the sponsor]'. These assertions plainly derive from the appellant himself and do nothing to assist the appellant's case in the absence of the sort of evidence which I have noted above. Consequently, such evidence attracts little weight.
9. I accept that the sponsor pays and has paid funds to the appellant. However, I am not satisfied, for the reasons I give above, that the appellant has proved that those payments establish the dependency which he claims. Accordingly, I remake the decision dismissing the appellant's appeal.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of the Entry Clearance Officer dated 25 January 2021 is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 July 2023

