



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-002385
(PA/53464/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19 June 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Ghulam Abbas
(no anonymity order made)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: -

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

Heard at Manchester Civil Justice Centre on 8 June 2023

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on the 14th June 1973. He appeals with permission against the decision of the First-tier Tribunal (Judge McMahon) to dismiss his appeal under the Immigration (European Economic Area) Regulations 2016.
2. The Appellant asserts that he is an extended family member as defined by regulation 8 of the Immigration (European Economic Area) Regulations 2016. He claims to be the dependent relative of his brother, Shahbaz Ashraf Bibi, a Spanish national exercising treaty rights in the UK. It was on that basis that he made an application for a family permit to enable him to enter the UK and live with his brother.

3. His application was refused by the ECO who did not accept that the two were related as claimed. That issue has now been resolved in the Appellant's favour by Judge McMahon, and the ECO has not sought to cross appeal that part of the judgment.
4. A second reason was however advanced, and that is the subject of this appeal. The ECO did not accept that the Appellant was dependent on his brother. Judge McMahon agreed and dismissed the appeal. On appeal to this Tribunal the Appellant submits that in doing so Judge McMahon erred in law because he failed to take into account material evidence that supported the Appellant's case.

The Hearing

5. This appeal was listed as an oral hearing on the 8th June 2023. On the 7th June I received an email from the Appellant stating that "basically this appeal is a paper appeal" and indicating that neither he nor his sponsor would be in attendance. I was asked to review the appeal on the papers and allow it. I have therefore treated the grounds of appeal as the submissions in the appeal.
6. For the Respondent Mr Tan appeared at the hearing. He made brief submissions and I reserved my decision.

My Findings

7. I have gleaned three essential points from the generally discursive grounds.
8. The first is that the Tribunal failed to have regard to key items of evidence in the Appellant's bundle. The grounds do not expressly identify what those documents were, apart from saying that they may be found between pages 71 and 92 of the Appellant's bundle. Pages 71 to 92 of the bundle contain various documents including utility bills and invoices from a grocery store. I have looked at these documents with care, and compared them with the decision. I am unable to identify any of these documents which is not taken into account by the Tribunal. Judge McMahon expressly refers to these documents at 27-28 of his decision. Although I am not entirely sure why the Judge expresses doubts about the English translation of the property deeds - they are stamped and signed by a translation bureau - he was perfectly entitled to reach the conclusion that he did, namely that the documents themselves do not provide a clear picture that the Appellant and his family are dependent upon their sponsor for their essential living needs.
9. The second point made is that the Tribunal has not taken into account the assertion that the house that the Appellant and his wife live in in Pakistan is owned and maintained by the Sponsor. They are therefore part of his 'household'. The limited evidence before myself and the First-tier Tribunal is that the Sponsor resides in the UK. The land deeds show that an individual named Shahbaz Ahmed owns that property. The Sponsor is identified in this appeal by a different name: Shahbaz Ashraf Bibi. It does not seem that this matter was brought to Judge McMahon's attention, but it may be that he was prepared to overlook it given that the owner is also identified as the son of Muhammad Ashraf. This might also explain why the Sponsor, unusually, bears the female honorific 'Bibi': he has taken each of his parents' names as his British surname. Taking this

documentary evidence at its highest along with the witness statements I accept for the purpose of this appeal that he owns the property that the Appellant currently lives in. I am not however satisfied that it follows that this means that the Appellant is currently part of his “household”. In Sohrab and Others (continued household membership) [2022] UKUT 00157 (IAC) the Tribunal considered what it means to be part of a household. There the Tribunal held:

To be a member of an EEA national’s household requires a sufficient degree of physical and relational proximity to the EEA national through living in the household of which the EEA national is the head, living together as a unit, with a common sense of belonging.

10. There was no evidence produced indicating that Mr Bibi spends any appreciable time in Pakistan at all: on the contrary the evidence was that he resides in the UK and works full time. Although the witness statements refer to his ownership of the house, nowhere do they assert that he is part of that household, or that he even lives there part of the year. The fact that he owns the house does not establish that he is the head of that “household”.
11. The final submission is that the Judge has impermissibly looked for a dependency of necessity rather than actuality, contrary to the purpose of the treaties and established caselaw, for instance Reyes v Sweden [2014] EUECJ. This is not made out. It is quite clear from the decision that the Tribunal understood its task and there is nowhere in its reasoning which indicates that this appeal was dismissed on the ground that no good reason had been advanced for the claimed dependency, or because for instance it had not been shown that the Appellant was unable to provide for himself. As paragraphs 35 and 36 of the decision make clear, the appeal was dismissed because on the evidence before it the Tribunal could not be satisfied that the money which it accepted to flow from the UK to Pakistan was used for the Appellant’s essential living needs.

Notice of Decision

12. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.
13. There is no order for anonymity.

Upper Tribunal Judge Bruce
10th June 2023