



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003263
UI-2022-003264
First-tier Tribunal No: EA/52010/2021
EA/52008/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25 June 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ALI HASSAN SHAH
VANEENZA HASHMI
(NO ANONYMITY ORDER MADE)**

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Malik instructed by Kenton Solicitors.
For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 7 June 2023

DECISION AND REASONS

1. The appellants', a husband and wife, both nationals of Pakistan, born on 15 April 1992 and 1 March 2002 respectively, appeal with permission a decision of First-tier Tribunal Judge Birrell (the Judge), promulgated following a hearing at Manchester on 19 May 2022, in which the Judge dismissed their appeals against the refusal of their applications for EEA Family Permits to enable them join the brother of the first appellant (the Sponsor), an Italian national exercising treaty rights in the UK, as extended family members.
2. The applications were refused by an Entry Clearance Officer (ECO) in a notice dated 6 April 2021, the operative part of which is in the following terms:
 - On your application you state that your sponsor has resided in the United Kingdom since 14 December 2017 and that you are financially dependent on him. As evidence of this you have provided sporadic money transfer receipts from your sponsor to you dated 17 May 2018 to 15 December 2020. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect

- to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.
- I would also expect to see evidence which fully details your 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.
 - Home Office records show that your sponsor has a spouse and at least 2 dependent children. The submitted evidence shows that he earns a monthly income of approximately £1151 and pays 600 rent, however you have not submitted any further documentation evidencing his current financial situation in the United Kingdom. Due to his low income, your sponsor also receives state benefits, namely, Working and Child Tax Credits and Housing Benefit. I am therefore not satisfied that it is suitable for your sponsor to financially support you, along with his own family in the UK. Therefore, after considering these factors, there is a risk that if you did arrive in the United Kingdom that you may become a burden on the public funds system of this country.
 - On the evidence submitted in support of your application and on the balance of probability, I am not satisfied that you are dependent on your sponsor. I am therefore not satisfied that you are a family member in accordance with regulation 8 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.
3. The Judge's findings are set out from [13]. The Judge noted that the appellants received different refusal letters, that in relation to the second appellant referring to discrepancies in the documentation produced in relation to the marriage, leading to it been stated that it was not accepted that the marriage had been established. Having reviewed the material available in the appeal bundle the Judge concluded that the parties had addressed the issues raised in the refusal letter and appears to conclude that it was accepted the parties are married as claimed [15].
4. The Judge considers the question of dependency at [16 - 17] writing in the latter paragraph:
17. The Appellant's case is that they have been dependent on the Sponsor since he arrived in the UK in December 2017 as A1 has never worked in Pakistan or had an income from any other source. While I accept that there is no minimum period of dependency required, given that the Appellant asserts that he has never had another source of income other than the financial support of the Appellant I find his claim is undermined by the absence of any evidence relating to the period 2017 - May 2018 when the evidence of transfer receipts start. I therefore find that the Appellant has not been reliant on the support of the sponsor to meet his essential needs.
5. Thereafter the Judge considers the exercise of discretion before writing at [20]:
20. The United Kingdom, under the 2016 Regulations, was not obliged to issue a family permit to an extended family member in the same way in which they were obliged to do so to a family member. The ECO in exercise of the discretionary power to grant a family permit to an EFM refers to evidence indicating that the UK based sponsor who, although he works, does not have a substantial income (£1100 per month) and

who has a wife and two dependent children to support, had not established it was sustainable for him to support the appellant in the UK whilst meeting his own needs and the needs of those dependent upon him as he himself was in receipt of Working Tax Credit, Child Tax Credit and Housing Benefit. It did therefore not appear to the ECO appropriate in all the circumstances to issue the EEA family permit and I find that it was a discretion open to him in all the circumstances.

6. The appellant sought permission to appeal asserting the Judge erred by failing to give adequate reasons in support of the findings of fact and overall assessment of the evidence, and in applying the wrong test in expecting the Sponsor to have substantial income rather than considering the factual test of dependency.
7. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge McWilliam on 16 January 2023, on the basis it was arguable that the Judge did not adequately reason why the test for dependency was not satisfied (see [17]).

Analysis and discussion

8. It is not disputed that the Halifax Bank account of the UK based sponsor shows regular transfers to an organisation, acemoneytransfers.com, on the following occasions:

Date of deposit with acemoneytransfers.com	Amount in £
30/11/20	100
16/12/20	400
21/1/21	250
12/2/21	250
9/4/21	200
6/5/21	250

9. Remittances per se do not, however, establish dependency. The sending of remittances by family members in the diaspora back to family members in their home country is common with many companies advertising their services at competitive rates to attract business in the UK and elsewhere. This is not an issue unique to Pakistan but to many countries where family members have migrated to the UK and send funds back to help remaining family members. It is therefore not the fact that remittances were made which is determinative but the purpose for which they were made, i.e. to meet essential needs which could not be met without such support. Under the Immigration (EEA) Regulations 2016 (the 2016 Regulations) it is necessary for the person making such an assertion to prove it.
10. The date of decision was 26 February 2021 and the date of hearing 19 May 2022. There was, as noted above, evidence of money being sent out of the UK based sponsor's bank account for the periods provided above. There may have been others but that is a snapshot taken from the bank statements that were before the Judge.
11. At [17] the Judge notes the claim that the appellants had been dependent upon the UK based sponsor since December 2017, as the first appellant had never worked in Pakistan or had an income from any other source but find such a claim to be undermined by the lack of evidence relating to the period 2017 to May 2018. Even if that is correct and the appellant could not establish what is claimed for that period, the Judge does not appear to consider the remittance

receipts or evidence of remittances provided which cover one payment on 17 May 2018 and a number of payments of 2019, 2020, 2021.

12. If what the Judge is implying is that the appellant had not established his claim on the evidence, and arguably more was required, a reader of the determination cannot clearly understand the Judges thinking. There is merit in the challenge on the basis of inadequate reasons.
13. Whether that error is, however, material requires further consideration of the content of the decision as a whole. The evidence of the remittances starts at page 51 of the appellants bundle where there are a number of National Bank of Pakistan and Meezan Bank remittance receipts confirming the beneficiary, the sender, amount in Pakistani rupees, date, receiver's signature and other identity information. The receipts provide no further information in relation to the appellants' circumstances until one gets to page 60. An examination of those documents produces the following summary:

Page of A's bundle	organisation	date	Recipients (Appellants) stated occupation	purpose	Relationship to sender	Comment
60	United Bank Limited (UBL)	21/11/19	Private service	Home remittance	Brother	
62	UBL	illegible	Agriculture		Brother	
63	UBL	8/1/20	Agriculture		Brother	
66	UBL	27/2/20	Agriculture		Brother	
67	UBL	8/1/20	Agriculture		Brother	Duplicate of document at page 63
69	UBL	26/12/19	Agriculture		Brother	
70	UBL	21/11/19	Private service		Brother	Duplicate of document at page 60
71	UBL	23/10/19	Agriculture		Brother	
73	UBL	24/6/19	Agriculture		Brother	
74	UBL	16/5/19	Agriculture		Brother	
75	UBL	4/4/19	Agriculture		Brother	
76	UBL	13/3/19	Agriculture		Brother	
77	UBL	17/5/18	Salaried		Brother	
78	UBL	18/8/21	Private service		Brother	
80	UBL	9/8/21	Private service		Brother	
81	Bank Alfalah (BA)	16/7/21	Self employed		Cousin (changed by hand to read)	

					brother)	
82	BA	10/6/21	Self employed		Brother	
83	BA	15/4/21	Self employed		Cousin (changed by hand to read brother)	
84	BA	9/4/21	Self employed		Cousin (changed by hand to read brother)	

14. The dates of some of the remittance receipts is also of importance. It is clear that a number of them postdate 31 December 2020, the date after which the UK exited the European Union.
15. In his application for the EEA family permit the appellant stated he had not worked in any of the jobs listed in the application. He also claimed he received £300 per month from his UK based sponsor, a claim not supported by the figures in the table above showing the payments made to acemoneytransfers.com.
16. There was before the Judge a document described as a Rent Agreement made between Ali Hassan Shah for the rental of a house in the sum of ₹7,000 per month paid on the first of every month for the period 2018 to 2020. The agreement appears to be dated 3 April 2018.
17. There is also an affidavit sworn by the first appellant detailing monthly expenses for May 2021 only in the sum of ₹34,490 in which he claims to be jobless and not engaged any government/semi government/private department and not to own any property in Pakistan, to live in a rented house, and not have any additional source of income nor receive any economic assistance from the government of Pakistan. That document is dated 25th May 2021.
18. Remittance certificates from acemoneytransfers.com for the period 2015, or any other period prior to 20 November 2017, when it appears the UK based sponsor obtained his Italian citizenship, are not relevant as they will be payments made by a person who was not an EU citizen at that time.
19. There was before the Judge evidence contradicting the appellant's claim to have no other source of income or means to meet his essential needs, as it was stated on a number of occasions during the relevant period that he worked in agriculture, was salaried, in private service, or was self-employed. The Judge did not, however, make a finding on what appears to be a clear contradiction in the evidence.
20. As noted above, the issue is whether the error in the Judge's finding on dependency is material. When assessing that I have adopted the position, making it clear this is not a finding made as a result of a detailed analysis of the evidence but rather taking the appellant's claim at its highest, that dependency had been established as claimed. If that was the case then the appellants will come to the United Kingdom to live with their UK based sponsor at his property in Lancashire.
21. The ECO sets out concerns in relation to the sponsor's own situation in that he has a spouse, two dependent children, a modest income, and receives a number of state benefits.

22. The criticism in the grounds seeking permission to appeal that the Judge applied the wrong test in expecting the sponsor to have substantial income rather than considering the factual test of dependency is a claim without merit. The application for Family Permit was refused because the ECO was not satisfied the appellant was able to satisfy all the requirements of the Regulations. Regulation 12 relates to the issue of an EEA family permit. In relation to an extended family member those regulations provide:

- (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.

23. Regulation 12(4)(c) was included in the Regulations as an extended family member, even if dependent or living in the EU national sponsor's household, has no automatic right to be admitted to a Member State unless the national authorities facilitate such entry.

24. Modernised Guidance provided to caseworkers is available in the publication entitled Free Movement Rights: extended family members of EEA nationals, version 7.0 published on 27 March 2019. The guidance divides the process of considering an application by an EFM into four stages. Stage 1 requires consideration of the status of the EEA sponsor, Stage 2 consideration of the relationship, Stage 3 qualifying conditions, and Stage 4 an extensive examination of personal circumstances.

25. I accept it is important not to lose sight of the fact that the 2016 Regulations incorporated into domestic legislation Directive 2004/38/EC ('the Free Movement Directive'). A material element therefore to be considered as part of the extensive examination of all the circumstances is the effect the decision has on the EEA national exercising their free movement rights. In this case there is no evidence the EEA national will be deterred from exercising his free movement rights if the application by the EFM is refused.

26. The decision-maker is required to consider if there are any other reasons why it is not in the interests of the public good to issue the applicant with a registration certificate or residence card.

27. It cannot be disputed that a decision-maker is lawfully entitled to refuse to issue a Family Permit on the basis an applicant may, at some point in the future, become an unreasonable burden on the social assistance system of the UK. If there is evidence of a real tangible risk of an applicant becoming such a burden, that may form part of the consideration of whether discretion should be exercised in an applicant's favour or not.

28. The only ground of appeal available to the appellants is that the decision is in breach of rights under the EU Treaties. The jurisdiction of the Tribunal is limited to expressing that conclusion and I have no authority to consider how the discretion ought to have been exercised or whether it should have been exercised differently.

29. The finding of the Judge that it was not made out on the facts that the exercise of discretion in the manner undertaken by the ECO was irrational, or a breach of

any person's rights under the EU Treaties is sustainable. On that basis the Judge's conclusions in relation to the exercise of discretion are not infected by legal error.

30. As the ECO did not consider it appropriate to exercise the discretionary power in favour of the appellants/EU national sponsor, it is not made out the Judge's error in relation to the issue of dependency is material, for even if it had been found that the appellants were dependent the concerns of the ECO leading to the refusal to exercise discretion in the appellants' favour will have meant the appeal being refused in any event.

Notice of Decision

31. The First-tier Tribunal Judge has been shown to have made an error of law in failing to provide adequate reasons in relation to the finding of dependency, but such error is not material in light of the sustainable decision by the ECO not to exercise discretion in favour of the appellant/EU national sponsor.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 June 2023