



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

**Case No: UI-2022-003988**  
**First-tier Tribunal No:**  
**EA/51667/2021**  
**IA/07580/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 24 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**BABAR MEHMOOD**  
**(no anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes, instructed by Latitude Law Solicitors  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 12 July 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 16 December 1984. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for a residence card under the European Economic Area (EEA) Regulations 2016 as an extended family member of an EEA national.

2. The appellant entered the UK on 2 February 2019 following an entry clearance application made on 3 October 2018 as a visitor. That followed previous unsuccessful

applications, the most recent of which was an application made on 14 June 2018 and refused in July 2018. In both applications, of 14 June 2018 and 3 October 2018, the appellant gave as the main purpose of his trip seeing his brother Mudassar Ismail who was sponsoring his trip and accommodating him in the UK, and stated that he was a self-employed farmer living with his family in Pakistan.

3. On 22 March 2019 the appellant applied for a residence card as an extended family member of the sponsor, his brother Shujaha Hussain Mohammed, an Italian citizen living in the UK since September 2011. The appellant claimed to have been dependent upon his sponsor since 2011 whilst he was living in Pakistan and claimed that he remained dependent upon the sponsor in the UK. His application was refused on 16 July 2019 on the basis that the respondent did not accept that he was the extended family member of the sponsor.

4. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal by Judge Siddiqi on 19 September 2019. Judge Siddiqi found there to be numerous discrepancies in the evidence, noting inconsistencies in the appellant's evidence as to when the sponsor began financially supporting him, when he worked and ceased working for his father and when his father stopped giving him money. Judge Siddiqi did not accept that the appellant needed the support from the sponsor to meet his essential needs in Pakistan or that he was dependent upon the sponsor or was a member of his household in Pakistan, and dismissed the appeal in a decision promulgated on 30 September 2019.

5. The appellant, in the meantime, sought and was refused pre-settled status under the EUSS. He then made a further application for an EEA residence card on the same basis as previously, on 18 December 2020, which it was said addressed and explained the previous concerns of the respondent and Judge Siddiqi about the evidence of financial dependency upon the sponsor.

6. In that application it was claimed that the appellant had worked with his father on his father's farm from 2005, receiving between 8,000 to 11,000 PKR a month, but that his father stopped paying him in 2011 which was when the sponsor began supporting him financially. It was claimed that the sponsor paid him £200 to £500 a month from 2011 to 2015 and then £500 a month from 2015. Reference was made in the application to the evidence produced by the appellant including his bank statements and documents confirming the deposits made into his bank account. It was said that the evidence of those deposits consisted of: cash deposits from the sponsor and the relevant money transfer receipts; cash deposits from the sale of corn/cotton/potatoes from the appellant's father's farm for items sold by the appellant on behalf of his father which he then repaid from his account to his father; a signed affidavit from his father explaining that he loaned the appellant 1,000,000 PKR for his visit visa application which the appellant was required to repay after a disagreement about whom he had decided to marry, and evidence of that money leaving his account in instalments by 3 May 2018. Reference was made to attached colour-coded tables showing the deposits into the appellant's account and cross-referencing the deposits to the documentary evidence produced. It was stated further, in the application, that evidence was provided to show how the money from the sponsor was spent, namely receipts relating to the purchase of clothing, gym membership, football club fees, groceries and medical receipts, as well as purchases made for his wedding which took place on 19 November 2018. It was stated further in the application that the appellant had been residing in his sponsor's home in the UK since arriving here in February 2019 and that he continued to be financially dependent upon him in the UK.

7. The appellant's application was refused by the respondent on 30 March 2021. The respondent did not accept that the appellant had provided sufficient evidence that he was dependent upon his sponsor prior to his arrival in the UK or since entering the UK.

8. The appellant appealed against that decision. His appeal was heard on 6 May 2022 by First-tier Tribunal Judge Birrell. The judge heard from the appellant and the sponsor and found the evidence relied upon to be inconsistent. She considered that the various discrepancies in the evidence undermined the general credibility of the case and undermined the appellant's claim that he needed the sponsor's financial support to meet his essential needs. The judge said that even if she accepted that the appellant was now a member of his brother's household, his appeal failed as he had to establish prior and present dependency. The judge found that the appellant could not, therefore, meet the requirements of the EEA Regulations and she dismissed the appeal in a decision promulgated on 8 May 2022.

9. The appellant sought permission to appeal to the Upper Tribunal on four grounds: firstly, that the judge had failed to give weight to material evidence and had failed to have regard to relevant caselaw when considering the proof of dependency before her; secondly, that the judge had erred by failing to recognise that visitors to the UK could lawfully switch into the EEA Regulations from within the UK; thirdly, that the judge's conclusions on credibility were not supported by the evidence; and fourthly, that the judge had applied an incorrect test of dependency.

10. Permission was refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal on a renewed application.

11. The matter then came before me. Both parties made submissions, which are addressed in the discussion below.

## **Discussion**

12. Taking the grounds in the order followed by Mr Holmes in his submissions, I consider the fourth ground first, in which it is asserted that the judge applied an incorrect test of dependency. The grounds refer to the judge's finding at [13] where she stated: *"Even if I accept that the Appellant is now a member of his brothers household his appeal must fail as he must establish prior and present dependency as that is his claim."* Clearly that is wrong, since present dependency would not need to be established if current membership of the sponsor's household was accepted, as per the test set out in Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79. However I do not consider that anything material arises out of that. The judge was clearly aware of the correct test which she set out at [7], and therefore what she said at [13] was most likely an oversight. In any event, as Mr Bates submitted, the judge decided the appeal on the question of the appellant's past dependency, prior to him coming to the UK, rather than his current dependency, finding that he had not established that there had been such dependency. It is the challenge to that finding which therefore forms the material basis for the appeal to the Upper Tribunal.

13. In that regard, the appellant challenges, in his first ground of appeal, the judge's reliance upon the absence of remittance slips for the years 2011 and 2013 as undermining his overall claim as to dependency upon the sponsor, when he had otherwise produced other substantial evidence demonstrating financial dependency upon the sponsor. Mr Holmes submitted that no reasons had been provided by the judge as to why the absence of remittance slips for the years 2011 and 2013 undermined the credibility of the appellant's application. He submitted that the absence of evidence from a decade ago was not of relevance, provided that there was

subsequent evidence of dependency, and he submitted that there was a significant amount of other evidence which the judge had failed to consider. He referred in particular to the colour-coded tables provided by the appellant showing the evidence of financial support and cross-referencing that to deposits in the appellant's bank account.

14. However, as Mr Bates submitted, it was not simply a matter of there being incomplete evidence for the earlier years of financial dependency which concerned Judge Birrell, but those concerns reflected the earlier views of Judge Siddiqi and had therefore to be considered in the light of those earlier findings. It is clear from Judge Siddiqi's decision that there was significantly inconsistent evidence from the appellant and sponsor as to when the financial support from the sponsor commenced and when the appellant ceased receiving any money from his father for his work or otherwise, with the sponsor maintaining at that time that he had been supporting the appellant financially from 2015 and not 2011, as claimed before Judge Birrell. As Mr Bates accepted, Judge Birrell did not specifically refer to Judge Siddiqi's decision, but the decision was nevertheless in the evidence before her and Judge Birrell had confirmed that she had considered the evidence in the round. She was bound, in any event, by the guidance in Devaseelan to take that decision as her starting point. In the circumstances Judge Birrell was perfectly entitled to find that the absence of evidence to support the appellant's claim of financial dependency since 2011 undermined the overall account of the nature and circumstances of the dependency and was damaging to his credibility.

15. As for the evidence now relied upon by the appellant in his colour-coded tables, Mr Bates submitted that it did not take matters any further for the appellant, as the judge was not taking issue with the fact that money was being deposited into the appellant's account, but rather whether that money was genuinely being sent to him for his essential needs, and whether a credible account had been given by the appellant in relation to the financial dependency upon his sponsor. The tables showed money deposited into the appellant's account which was claimed, by the appellant, to be from the sponsor. The appellant claimed further that the deposits of money received from farming were all shown to have been sent back to his father, and that everything paid to him by his father was repaid as a result of them having fallen out. However, as Mr Bates submitted, this all came down to credibility and Judge Birrell provided proper reasons for finding the appellant's account to be unreliable and lacking in credibility.

16. Judge Birrell rejected the appellant's evidence owing to the inconsistency of his account with what he had said in his visa application form in October 2018. She noted that in his visa application form he had declared that he had an income of 1,000,000 PKR from farming, that that was the only income he received and that he had no other income or savings. She considered that an income of 1,000,000 PKR was sufficient income to cover the appellant's essential needs, with the implication being that there was no need for further financial support from the sponsor to meet such needs. The judge noted in addition that the appellant had made no mention of any income or financial support from the sponsor at the time he completed his visa application form, nor even mentioned the presence of the sponsor in the UK at all when asked about his family in the UK, but instead mentioned a different brother, Mudassar Ismail. The judge had regard to the appellant's attempt to explain the 1,000,000 PKR as not in fact being income, but as being a loan from his father for his trip which he had to repay. However she noted that the appellant had stated in his VAF that no one had contributed to the costs of his trip. I agree entirely with Mr Bates that Judge Birrell was perfectly entitled to consider those matters as being damaging to the overall credibility of the appellant's claim to have been dependent upon his sponsor since

2011 and was entitled to give the limited weight that she did to the further evidence now relied upon.

17.As for the second ground, the judge was not suggesting that there was anything unlawful about the appellant entering the UK as a visitor and then switching into the EEA Regulations, but her concern was why, if he was dependent upon the sponsor at that time as he claimed, did he not seek to enter in that category in the first place rather than as a visitor. As Mr Bates submitted, Judge Birrell was perfectly entitled to ask that question and to draw the adverse conclusions that she did in that regard. Likewise I find that nothing arises from the third ground, as the appellant's application form for 3 October 2018 has now been produced showing his evidence as being that his annual income was 1,000,000 PKR from farming. As discussed above, Judge Birrell was perfectly entitled to draw the adverse conclusions that she did from that evidence.

18.For all these reasons I find there to be no merit in the grounds. The judge was fully and properly entitled to make the adverse findings that she did and to conclude that the appellant had not provided a credible and reliable account of being financially dependent upon the sponsor for his essential financial needs prior to coming to the UK. The judge's decision to conclude that the required financial dependency was not demonstrated, and that the requirements of the regulations were not met, was accordingly one which was entirely open to her on the evidence before her. Accordingly I uphold her decision.

### **Notice of Decision**

19.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

18 July 2023