



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005151
FtT No: EA/05564/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

FAZAL JABBAR
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Unrepresented and no appearance

For the Respondent: Ms V Young, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 28 June 2023

DECISION AND REASONS

1. I have decided this case without participation from the appellant. By an email dated 19 June 2023, he informed the Upper Tribunal that he wished his appeal to be “decided on the papers”. I considered it appropriate to keep the case in the list in any event so that I could receive oral submissions from the respondent.
2. The appellant is a citizen of Pakistan. He applied under the Immigration (European Economic Area) Regulations 2016 for a family permit to join his uncle, an Italian citizen (the sponsor) in the United Kingdom. The application was based on claimed dependency under regulation 8 of the

2016 Regulations. The application was refused and the appellant appealed to the FtT.

3. The appeal was heard and dismissed without a hearing by First-tier Tribunal Judge Lucas (the judge) by a decision promulgated on 27 June 2022.
4. The judge wrongly stated that the application had been made under the EUSS, but nothing turns on that. What is significant is the clear error of fact, or misunderstanding of the evidence, made by the judge in respect of when the sponsor began sending money to the appellant and his father in Pakistan. At four points in his brief decision, the judge wrongly stated that the remittances had only started in 2021, “just prior” to the application being made. In fact, the evidence showed that these began in September 2020.
5. My provisional view was that the judge’s repeated reference to, and reliance on, the apparent last-minute initiation of the remittances meant that the error was material.
6. Ms Young quite properly noted that some of the money transfer receipts named the appellant’s father as recipient. I take this into account, but it was the appellant’s case that both he and his father were dependent on the sponsor. Evidence to that effect was contained in affidavits, a letter from a community organisation, and receipts for expenses.
7. The judge rejected all of that evidence as simply not being reliable. However, as fairly accepted by Ms Young, the judge gave no reasons for his rejection.
8. It follows from the above that the judge erred in respect of the timing of the remittances and erred again in respect of the other potentially supportive evidence. These errors combine to show materiality.
9. It is appropriate to remit this case to the First-tier Tribunal for a fresh decision to be made. There needs to be a carefully consideration of the evidence and clear findings made thereon.

10. It is a matter for the appellant as to whether he wants his appeal decided without a hearing once again, or whether he would like to participate (he could make submissions over a remote link, for example, or his sponsor could attend).

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

1. The remitted appeal shall be dealt with by the Taylor House hearing centre and a decision made by a judge other than First-tier Tribunal Judge Lucas.

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 28 June 2023