



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

Case No: UI-2023-  
003385  
First-tier Tribunal No:  
EA/50381/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

14<sup>th</sup> December 2023

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Nadeem Qaiser**  
**(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr R Ahmed, counsel, instructed by Mamoon Solicitors  
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 7 December 2023**

**DECISION AND REASONS**

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Nadeem Qaiser. However, for ease of reference, in the course of this decision I adopt the parties' status as it was before the FtT. Hereafter, I refer to Mr Qaiser as the appellant, and the Secretary of State as the respondent.
2. The appellant is a national of Pakistan. He arrived in the UK on 21 May 2019 having been granted a visit visa valid until 8 October 2019. On 16

July 2019 he applied for pre-settled status via the European Union Settlement Scheme (EUSS). That application was refused on 16 April 2020 because the appellant had provided insufficient evidence of his relationship with his sponsor, his brother, Mr Ahmed Tanveer. On 6 May 2020 the appellant applied for a residence card to confirm he is an extended family member of an EEA national exercising treaty rights in the UK. That application was refused by the respondent for reasons that set out in a decision dated 25 September 2020.

3. The respondent considered the application by reference to Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”). The respondent accepted the appellant is related to his sponsor as claimed but concluded the appellant has not provided adequate evidence that he was dependent upon his sponsor and/or a member of the sponsor’s household prior to his arrival in the United Kingdom. The respondent noted that despite his claim to have been dependent upon Mr Ahmed Tanveer, when he applied for a visit visa in April 2019, the appellant claimed he was visiting his brother, Bashir Ahmed, and that no one would be paying towards the cost of that visit.
4. The appellant’s appeal against that decision was allowed by First-tier Tribunal Judge Alis (“the judge”).
5. The respondent claims the judge erred in allowing the appeal for the reasons given. Three grounds of appeal are advanced. First, the judge erred in reaching his conclusion that the appellant has demonstrated that he was a member of his sponsor’s household prior to arriving in the UK, and during the time they both lived in Italy. The respondent claims the appellant was required to establish that he was either dependant financially upon the sponsor or was a member of his household. The respondent claims the evidence established neither. Judge Alis appears to have accepted the appellant was not financially dependent upon the sponsor since he had gone to Italy to work. The evidence was that it was the appellant’s eldest brother Bashir Ahmed who owned the house the family lived in in Italy. Second, it is unclear on what basis the judge finds the appellant to have demonstrated that he does in fact live with his sponsor as part of his household in the UK. The evidence relied upon by the appellant does not demonstrate the appellant is in fact living with his sponsor, nor did the judge consider the fact that it was Bashir Ahmed and not the sponsor, who supported the appellant’s application for entry to the UK as a visitor. The appellant did not seek to “join” his sponsor in the UK but instead entered as a visitor to see his older sibling. That application would have required him to demonstrate that he would be likely to return to the country he left, by means of financial stability in his own right. Finally, the judge failed to have regard to the decision of the Upper Tribunal in *Chowdhury (Extended family members: dependency)* [2020] UKUT 00188 (IAC). The appellant lived in his brother’s (Bashir Ahmed) house when the sponsor left Italy, and lived independently of the sponsor for a period of time, and thus breaking the ‘continuity’ required.

6. Permission to appeal was granted by Upper Tribunal Judge Kebede on 19 September 2023. She said:

“Arguably the judge failed to consider, and make any proper findings on, whether the appellant had demonstrated membership of the sponsor’s household in Italy and failed to consider the continuity of dependency/membership of the household.”

7. Ms Arif adopted the grounds of appeal. On behalf of the appellant Mr Ahmed accepts neither the appellant nor the sponsor addressed the respondent’s claim that in his application for a visit visa made on 3 April 2019, the appellant had claimed that he would be visiting his brother, Bashir Ahmed and that no-one else would be paying towards the cost of the visit. Mr Ahmed also accepts, quite properly in my judgement, that the judge does not address concerns raised by the respondent about the claim made by the appellant in his visa application, in his findings and conclusions.
8. Mr Ahmed submits that although the decision is brief, any failure by the judge to expressly address the matters referred to by the respondent was immaterial to the outcome of the appeal. Mr Ahmed drew my attention to the witness statement of the sponsor at pages 9 and 10 of the appellant’s bundle. The evidence of the sponsor was that the appellant lived with him in Italy until the sponsor came to the UK. The sponsor said he continued to pay the rent and bills of the house in Italy until the appellant moved to the United Kingdom to live with him. At paragraph 5 of his statement the sponsor refers to the letter he provided from Brescia Council *“clearly confirming that the appellant was member of my household in Italy”*. The relevant documents from the ‘Comune Di Ome, Provincia di Brescia’ comprise of a certificate that Mr Ahmed accepts lists the members of the family that live at the same address (Via Pietro Battola). The certificate confirms Mr Bashir Ahmed is the ‘Owner’. Mr Ahmed refers to paragraphs [27] to [29] of the judge’s decision. The judge acknowledges, at [27], that the fact the appellant lived with the Sponsor in Italy does not necessarily mean he formed part of the Sponsor’s household as the documents adduced in the appellant’s bundle suggested that not only he but his brother and all their family lived in one house. The judge accepted, at [26], that between 2016 and 2018 when the sponsor came to the UK, the appellant did live with the sponsor and other family members. The judge found the first part of the test in Regulation 8 is met. That is, the appellant had been residing in a country other than the UK and was a member of the EEA national’s household. The judge went on to find, at [29], that since his arrival in the UK, the appellant has remained with his sponsor and is part of the sponsor’s household. It was therefore open to the judge, Mr Ahmed submits, to allow the appeal and any error is immaterial.

### **Error of Law**

9. The appellant attended the hearing of his appeal and gave evidence as set out in paragraphs [13] to [14] of the decision. The judge also heard evidence from the appellant sponsor as set out in paragraphs [15] and [16] of the decision. The judge’s findings and conclusions are set out at

paragraphs [25] to [31] of the decision. The judge noted the sponsor went to work in Italy, and that there was evidence that he sponsored the appellant to go and work in Italy in 2008. The judge found that the sponsor became an EU Citizen at around the date when he was issued with an Italian passport on 9 April 2016. At paragraphs [27] to [30] the judge said:

“27. The Appellant’s evidence about what he did in Italy but given he went to Italy to work (see Schengen visa form in Appellant’s bundle) it would appear that when he went to Italy he was not being maintained by the Sponsor as an EU dependant. The fact he lived with the Sponsor in Italy does not necessarily mean he formed part of the Sponsor’s household as the documents adduced in the Appellant’s bundle suggested that not only he but his brother and all their family lived in this one house.

28. However, against this evidence I am prepared to accept that certainly between 2016 and 2018 when the Sponsor came to the United Kingdom the Appellant did live with the Sponsor and other family members. At this time the Sponsor was an EU national and therefore the first part of the test set out in Regulation is met.

29. He the (*sic*) joined the Sponsor in this country and is continuing to remain here with him in the same property. Again I must find he is part of the Sponsor’s household.

30. Whether the Sponsor financially supported the Appellant or not is not the issue in this appeal given I have accepted the Appellant has lived in his household. The Respondent has not reviewed most of the evidence in the bundle and were not represented at the hearing so I have no idea what her view of the Appellant’s evidence would have been.”

10. As Mr Ahmed submits, the judge acknowledges, at [27], that the fact the appellant lived with the sponsor in Italy does not necessarily mean he formed part of the sponsor’s household as the documents adduced in the appellant’s bundle suggested that not only he, but his brother and all their family lived in one house. That acknowledgement is difficult to reconcile with the conclusion reached at paragraph [28] of the decision. The respondent is entitled to know why, having said at paragraph [27], that the fact he lived with the Sponsor in Italy does not necessarily mean the appellant formed part of the Sponsor’s household, the judge found the appellant was a member of the sponsor's household so that the first part of the test set out in Regulation 8 is met.
11. At paragraph [28], the judge accepted that between 2016 and 2018 the appellant lived with the sponsor and other family members and that during that time the sponsor was an EEA national. In my judgement the judge erroneously proceeds in paragraph [28] upon the premise that all that is required is that the appellant lived with the sponsor, an EEA national. That is not the test. Regulation 8 requires the appellant to establish that he was either dependent upon the EEA national or that he was a member of the EEA national’s household. The judge does not address that test or provide any, let alone any adequate reasons for his conclusion that the first part of the test set out in Regulation 8 is met.

12. Equally, at paragraph [29] the judge states the appellant joined the sponsor in the UK and continues to remain here with him in the same property. The judge fails to address what had been said by the respondent that in his application for a visit visa, the appellant claimed he was visiting his brother Bashir Ahmed.
13. Although brevity is to be commended a, party appearing before a Tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the Tribunal is addressing its mind. In some cases, it may be perfectly obvious without any express reference to it by the Tribunal; in other cases, it may not. The parties are also entitled to be provided with adequate reasons (even if brief), so that they can understand the reasons the judge reached the decision he or she did.
14. I am quite satisfied that here the judge failed to give adequate reasons for the conclusions he reached and that the reasons that he does give, simply demonstrate that he failed to properly address the issues that arise in the appeal and failed to apply the correct test. The decision is vitiated by a material error of law and must be set aside.

#### Disposal

15. As to disposal, I have had regard to the background that I have set out. In all the circumstances, having considered paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012, I am satisfied that the Upper Tribunal should proceed to re-make the decision. The standard directions issued to the parties require the parties to prepare on the basis that if there is an error of law in the decision of the First-tier Tribunal, the Upper Tribunal will go on to remake the decision at the same hearing.
16. Mr Ahmed confirmed that no further evidence has been filed and served by the appellant. Mr Ahmed invited me to adjourn the hearing. He submits the appellant would wish to rely upon further evidence addressing the claim that he was a member of the sponsor's household in Italy and continues to be a member of the sponsor's household in the UK. In the absence of any explanation for the failure to file any further evidence that may be relied upon in advance of the hearing before me, I refused the application for an adjournment. The standard directions issued to the parties are clear and it is incumbent on representatives to ensure, absent good reason, they are complied with. In my judgement it cannot be in the interests of justice or in accordance with the overriding objective for there to be further delay. The evidence relied upon by the appellant to address the issues that arise in this appeal was set out in the evidence that was previously before the First-tier Tribunal and there is no reason why the decision should not be remade having regard to that evidence.

#### Remaking the decision

17. Mr Ahmed adopted the appellant's skeleton argument that appears at pages 4 to 8 of the appellant's bundle. He did not make any further oral submissions or draw my attention to any particular evidence set out in the

appellant's bundle. The issues as identified in the appellant's skeleton argument are said to be twofold. That is, whether the appellant:

- a. continues to be dependent of Ahmed Tanveer and or
- b. to be a member of Ahmed Tanveer's household

18. With respect, it is not simply a question of whether the appellant continues to be dependent on the EEA national or to be a member of the EEA national's household. The respondent accepts the appellant is a relative of Mr Ahmed Tanveer but has never conceded that the appellant was a dependent of Mr Ahmed Tanveer or a member of his household when they lived in Italy.
19. In summary, Regulation 8 of the Immigration (European Economic Area) Regulations 2016 requires the appellant to first establish that he is a relative of an EEA national. Provided, as here, the relationship is established, there are two separate routes to qualification. The appellant must demonstrate that he was either: (i) dependent on the EEA national in a country other than the UK, or (ii) a member of the EEA national's household in a country other than the UK. Provided that is established the appellant must establish that he has joined the EEA national in the UK and continues to be dependent upon the EEA national, or to be a member of the EEA national's household. Although 'dependence' and 'membership of the EEA national's household' are alternative routes, there is often likely to be some overlap in the evidence.
20. Insofar as the appellant maintains he was and remains dependent on Mr Ahmed Tanveer, the entitlement to an EEA family permit only accrues if the appellant is 'dependent' on the union citizen. In *Reyes v Migrationsverket* (C-423/12), albeit in the context of a 'Family member', the CJEU confirmed that dependency is a question of fact and the dependency must be genuine, but if it is found that the family members essential needs are met by the material support of an EEA national, there is no need to enquire as to the reasons for the dependency and there is no reason to show emotional dependency.
21. In *Lim - ECO (Manila)* [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs. Whether the appellant was and is dependent on the sponsor is therefore a factual question for me to assess on the evidence before the Tribunal.

22. As far as the appellant relies upon his being a member of the EEA national's household, in *Sohrab and Others (continued household membership) Pakistan* [2022] UKUT 00157 (IAC), the Upper Tribunal held that 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. There should be a genuine assumption of responsibility by the EEA national for the EFM. Questions of the commencement of the assumption of responsibility and the duration of dependency or household membership are relevant.
23. No oral evidence was called before me. For the avoidance of doubt, in reaching my decision I have regard to all of the evidence set out in the appellant's bundle that was before the First-tier Tribunal, whether or not it is referred to in this decision.
24. The evidence of the appellant is set out in a witness statement that is undated. He states he moved to Italy in 2008 and lived with the sponsor until the sponsor moved to the UK in 2018. He claims he has always been financially dependent upon his brother and has also been a member of his household. He refers to the letter from the 'Comune Di Ome, Provincia di Brescia', which he claims, confirms he was a member of his sponsor's household in Italy. He refers to documents that he claims, clearly confirm he has been living with his sponsor since the appellant moved to the UK in 2019. He states he does not have work in the UK, and that his sponsor has been responsible for all his living costs.
25. The evidence of the sponsor is set out in a witness statement that is also undated. He claims the appellant went to Italy as his dependent in 2008 and they were members of the same household in Italy between 2008 and September 2018. He claims he continued to pay the rent and bills for the house in Italy until the appellant moved to the United Kingdom to live with him. He too refers to the evidence from the 'Comune Di Ome, Provincia di Brescia', and he too claims that confirms the appellant was a member of his household in Italy.
26. I do not accept the claim made by the appellant that he was dependent upon his brother Ahmed Tanveer when they lived in Italy, or that he was a member of Ahmed Tanveer's household. The evidence before me in fact undermines the claims made by the appellant and sponsor.
  - a. Contrary to the claim made by Ahmed Tanveer in his witness statement, the appellant did not go to Italy as his dependent. The appellant applied for a Schengen Visa to work in Italy; (*Appellant's bundle - Page 82*). On 23 March 2007 the appellant was granted authorisation to work; (*Appellant's bundle - Page 87*).
  - b. Neither the appellant nor his sponsor address the appellant's employment history in Italy. There is at least some evidence before me that the appellant was in employment until 15 April 2019; (*Appellant's bundle - Page 81*).

- c. There is a distinct absence of credible evidence that the appellant was a dependent of Ahmed Tanveer when he was living in Italy, and that he continued to be dependent upon Ahmed Tanveer after Ahmed Tanveer came to the UK in 2018.
27. Equally, I reject the appellant's claim that he was a member of Ahmed Tanveer's household.
  - a. The appellant relies upon a declaration made by Ahmed Tanveer on 25 July 2017 that he 'hosts' the appellant from 25 July 2017; (*Appellant's bundle - Page 85*). That declaration and the reasons why it was made are not explained. In the absence of any context to explain that document, I attach little weight to the declaration made by Ahmed Tanveer. It is not independent evidence capable of corroborating the claim that the appellant was either dependent upon Ahmed Tanveer or that he was a member of his household.
  - b. There is no evidence to corroborate the account of Mr Ahmed Tanveer that following his arrival in the UK, he continued to pay the rent and bills for the house in Italy in which the appellant lived.
  - c. The certificate issued 'Comune Di Ome, Provincia di Brescia'; (*Appellant's bundle - Page 74*) does no more than confirm that as at 17 April 2019, the family members named were 'registered' as being resident in a property. The information is said to be 'Based on the results of the Resident Population Registry'. The document refers to the appellant's elder brother, Bashir Ahmed' as the "Owner". Curiously, it refers to Ahmed Tanveer being resident as the property as at 17 April 2019, when in fact he had come to the UK in 2018.
  - d. In any event, the appellant's claim that he was dependent upon or a member of Ahmed Tanveer's household is undermined by the document titled 'House Agreement for Free to Use'; (*Appellant's bundle - Page 78*). That appears to be an agreement under which Bashir Ahmed and Ahmed Tanveer grant long term residence to the appellant of an apartment comprising of 4 rooms, a separate kitchen and two bathrooms located on the first and second floor of Via Pietro Battola. Quite apart from the reference to Bashir Ahmed in that document, without explanation, it is difficult to see why some form of 'Agreement' was necessary if the appellant was a member of Ahmed Tanveer's household. The document is not easy to follow since it appears to use the words "Bailee" and "borrower" interchangeably. However it appears that the document is for an indefinite period and provides that "any worsening of the condition of the property given on loan, the borrower is responsible". Rather than being evidence that the appellant was a member of the EEA national's household, it seems the appellant was provided with accommodation of his own by his brothers, albeit within a property that seems to have been occupied by other members of the family too. The appellant was responsible for any deterioration to the parts of the property he had use of.



28. As far as dependence upon or membership of the EEA national's household in the UK is concerned, the appellant does not dispute the fact that he arrived in the UK with a visit visa. Neither the appellant nor his sponsor have addressed in their evidence before me, the claim made by the respondent in the decision appealed that when applying for his Visa to the UK on 3 April 2019 the appellant claimed he would be visiting his brother, Bashir Ahmed and no one would be paying towards the cost of the visit. In order to secure a visit visa, the appellant will have had to establish that he is a genuine visitor and that he will leave the UK at the end of his visit.
29. In support of his application, the appellant provided evidence of a transfer of €102.82 made by Mr Ahmed Tanveer to the appellant on 17 May 2019. That does not establish the appellant was dependent on the sponsor following the sponsor's arrival in the UK. Mr Ahmed Tanveer has provided copies of bank statements that disclose small payments to the appellant by 'FPO' ("Faster Payments Out") between 3 February 2020 and 19 November 2020. Curiously, there are two entries for 16 November 2020. The first is a payment to the appellant in the sum of £206 and the second is an entry of £186 being received from the appellant on 16 November 2020; (*Appellant's bundle page 67*). The entry states "*Money back to bro*". Those transfers are unexplained given the modest sums involved. The appellant has a bank account and his bank statement disclose the corresponding payments into and out of his account.
30. Although there is some evidence that the appellant and Ahmed Tanveer live at the same address, in the form of correspondence addressed to the appellant at the same address as Mr Ahmed Tanveer (*Appellant's bundle page 90*) and the appellant's name being added to the 'Severn Trent' account for the property; (*Appellant's bundle page 91*), I find that the appellant and his sponsor have not provided an honest and truthful account of the circumstances as they really are. The inclusion of the appellant's name on the 'Severn Trent' utility account is in my judgment evidence of a self-serving attempt by the appellant and sponsor to create the impression that the appellant remains a member of the EEA national's household in the UK. In fact, it undermines the claim. The appellant may now have a potential personal liability for the utility account. Rather than demonstrate that he is simply a member of the EEA national's household, it demonstrates the appellant is prepared to assume liability to recognise the use he makes of the utility.
31. I do not accept that the appellant and his sponsor are credible and have been honest in their evidence before me about the family dynamics. Considering the evidence as a whole I find that the appellant has not established, on the balance of probabilities, that he is an extended family member of the EEA Sponsor as defined in Regulation 8 of the 2016 EEA Regulations.
32. It follows that I dismiss the appeal.

## **NOTICE OF DECISION**

33. The Secretary of State's appeal against the decision of First-tier Tribunal Judge Alis is allowed and the decision of First-tier Tribunal Judge Alis is set aside.
34. I remake the decision and dismiss the appeal of Mr Nadeem Qaiser against the Secretary of State's decision dated 25 September 20208 .

**V. L. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**8 December 2023**