**Upper Tribunal**
**(Immigration and Asylum Chamber)**

Appeal Numbers: EA/01252/2020
EA/01253/2020, EA/01255/2020
EA/01256/2020, EA/01258/2020

**THE IMMIGRATION ACTS**

**Heard at Bradford IAC by a remote hearing**
**On the 13 August 2021**

**Decision & Reasons Promulgated**
**On the 11 October 2021**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**MS AYESHA IMRAN**
**MRS AMER IMRAN**
**MR DANYAL IMRAN**
**MR IMRAN**
**MR RAFYA IMRAN**
**(ANONYMITY DIRECTION NOT MADE)**

Appellants

**AND**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr R. Ahmed, Counsel instructed on behalf of the appellants
For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

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Introduction:

1. The appellants appeals with permission against the decision of the First-tier Tribunal Judge Saffer (hereinafter referred to as the "FtTJ") who dismissed their appeals against the decisions made to refuse their applications for a family permit as dependent extended family members of an EEA national in a decision promulgated on 18 February 2021.

2. The background is set out in the decision of the FtTJ and the evidence in the bundle. The appellants are nationals of Pakistan. The 1st and 2nd appellants are married and are the parents of the other listed appellants. They applied on 14 November 2019 for residence cards as the extended family members of the 2nd appellants brother, a Spanish national, resident in the United Kingdom.

3. The applications were refused in a decision taken on 10 January 2020 where it was stated that the money transfer vouchers from 2 April 2018 to 1 October 2019 did not establish financial dependency. It was considered that there was no evidence of the family circumstances to show that without the sponsor's financial support their essential living needs could not be met.

4. The appellants appealed and the appeal came before the FtT on the 15 February 2021. In a decision promulgated on 18 February 2021 the FtTJ dismissed their appeals, having found that the appellants had not demonstrated on the balance of probabilities that they were dependent on the sponsor.

5. Permission to appeal was issued and on 11 December 2019 permission was granted by FtTJ Keane.

6. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing.

7. Subsequently, the appeal was listed for a remote hearing via Microsoft teams. The Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

8. The hearing took place on 13 August 2021, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I was present at Court. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.

9. Mr Ahmed relied upon the grounds which he amplified in his oral submissions. He submitted that the FtTJ had accepted that the appellant and the sponsor were related as claimed and that the FtTJ also accepted that the transfers of money had been regular (at paragraph [17]). However the FtTJ failed to give adequate reasons for making the adverse credibility findings he made set out at paragraph [17] and that this was an error of law.

10. Mr Ahmed, in his oral submissions, invited the tribunal to consider the terms of the grant of permission which he adopted. He submitted that there had been an arguable procedural irregularity which had affected the outcome by the judge requiring the appellants to be present for cross examination before accepting that there could be evidence of dependency. Mr Ahmed submitted that this was an irrational line of reasoning and amounted to an error of law. The test was a balance of probabilities which was not applied by the FtTJ.

11. Furthermore, he referred to paragraph 9 of the grounds where it was argued that the judge had found that £250 per month was not adequate because no evidence of comparative living standards have been provided. In the grounds it was submitted that the judge referred to comparative living standards but did not substantiate how that may have been achieved and that it was thus an unreasonable finding. Mr Ahmed also relied upon paragraph 10 that £250 was wholly inadequate in the UK but such a comparison of living costs between Pakistan and the UK would be wholly unreasonable. He therefore invited the tribunal to find that the decision of the FtTJ should be set aside.

12. Mr Diwnycz on behalf of the respondent relied upon the written submissions that had been sent to the tribunal on 14 May 2021. In those written submissions, it was submitted that the judge had directed himself appropriately in law and that the assessment of the evidence was one that was open to him.

13. Mr Ahmed further submitted that the strongest point was that there was a procedural irregularity and that consequently the FtTJ's assessment at [17] was irrational.

Decision on error of law:

14. The Immigration (European Economic Area) Regulations 2016 have now been revoked by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 Schedule 1(1) paragraph 2(2) (December 31, 2020. Revocation, however, has effect subject to savings specified in The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, Regulation 2 and Schedule 1 and The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 Regulations ("The Transitional Provisions").

15. Schedule 3 paragraph 5 of the Transitional Provisions deals with existing appeal rights and appeals and as this appeal was extant prior to commencement day, and it is not argued by either party that the tribunal does not have jurisdiction to consider the appeal.

16. Prior to revocation Regulation 8 of the 2016 Regulations (so far as relevant) read as follows:

Extended family member"

**8.** - "(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (1A),(2), (3), (4) or (5).

(1A) ...

(2) The condition in this paragraph is that the person is-"

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either-"

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

17. Notwithstanding the persuasive submissions made by Mr Ahmed, I am not satisfied that the FtTJ's decision involved the making of an error on a point of law. I shall set out my reasons for reaching that conclusion.

18. There is no dispute that in the light of the lack of challenge to the nature of the relationship between the sponsor and the appellants, the place of residence of the appellants and their desire to join the sponsor in the UK that the only issue that remained was that of dependency. That was properly identified by the FtTJ in his decision at paragraphs [4 – 5].

19. The FtTJ thereafter conducted an assessment of the evidence before the tribunal in support of the claimed dependency and summarised the evidence between paragraphs [5 – 15] of his decision.

20. The grounds identify that the FtTJ accepted the evidence that there were regular financial transfers from the EEA sponsor to the appellants as set out at paragraph [17]. This is correct as the judge found from the documentary evidence summarised at paragraph [13] that there had been money transfer vouchers produced from 2 April 2018 until 4 January 2021 totalling £8715.

21. The grounds however seek to challenge the assessment of the evidence and the conclusions reached upon the issue of dependency thereafter.

22. It is firstly argued that the judge failed to apply the correct test as to dependency within the EEA Regulations and that he applied a "higher standard of proof" and secondly, that at paragraph [17] the judge suggested that cross-examination would have been critical for him to have accepted the evidence of dependency. In this context Mr Ahmed submits that the FtTJ erred in law in the way identified in the grant of permission and that this was a procedural irregularity affecting the outcome of the appeal by requiring the appellants and the sponsor to be cross-examined before accepting their evidence. The grant of permission states: "such was arguably an irrational proposition, it hardly being the responsibility of the appellant and the sponsor that they were not cross-examined, and the judge arguably impose an unreasonable condition which the judge prayed in aid before resolving the issue whether the money transfers comprise the sole income against the appellants."

23. In my judgement it is important to consider the factual findings of the FtTJ as he expressed them in his decision and as set out at paragraph [17]. The FtTJ stated as follows: –

> "17. I accept that money transfers identified in [13] above are regular, and that the money is sent from Mr Chughtai to Mrs Imran as that is what the documents say. I do not accept that is their only income for the following interrelated reasons. I do not have to accept what Mrs Imran and Mr Arshad say just because they say it, especially where they have not been subject to cross-examination, which is now by no means unusual in the new remote ways of working. There is no documentary evidence of remittances prior to April 2018 in the absence of which I do not accept it has been established that there were any, and accordingly I am satisfied that the appellants were able to provide for their living needs out of their own resources. It has not been established that £250 per month is adequate to provide for a family of 5 in Pakistan is no evidence has been provided of comparative living standards, is plainly being wholly inadequate in the United Kingdom. There is no evidence from Mr Arshad's brother explaining why it is said he doesn't contribute to the household expenses in Pakistan or regarding his circumstances despite that evidence been readily available. The documentary evidence of grocery purchases not current. I do not accept Mr Arshad does not work since 2014 as, apart from Covid, no cogent explanation has been given as to why he has not worked. The school fees receipts do not show Mr Chugtai pays them and indeed Mrs Imran said that she pays them out of the money received. I therefore place no weight on Mr Ratyal's letter as it is clearly factually incorrect. There is insufficient cogent evidence of the family's circumstances to show that without Mr Chugtai's financial support their essential living needs could not be met as Mr Chughtai was unable to say whether they have any savings, and just because they say they have no other income or savings, that does not mean that they don't."

24. Whilst it is correct as Mr Ahmed points out that the judge identified that there had been money transfers made (by reference to paragraphs 13 and 17 taken together) the judge did not accept that the evidence before him demonstrated

that this was their only income for the reasons that he went on to give at paragraph [17]. In this context the judge plainly meant that he was not satisfied on the balance of probabilities that the income they received was necessary for their "essential living needs". The reasons he gave were set out at paragraph 17. He found that there was no documentary evidence of remittances prior to 2018 and in the absence of the evidence he did not accept that it had been established that there had been any earlier remittances and therefore the appellants were not able to demonstrate that their living needs were not met out of their own resources. The judge also found that it had not been established that £250 per month was adequate to provide for a family of 5 as no evidence had been provided of their comparative living standards. Similarly there was no evidence from Mr Arshad's brother explaining why he did not contribute to the household expenses in Pakistan or evidence regarding his circumstances despite that evidence being readily available. The judge found the documentary evidence of grocery purchases was not current and he did not accept that Mr Arshad had not worked since 2014 as no cogent explanation had been given as to why he had not worked. The judge made reference to the school fees evidence which was not consistent with the factual evidence and concluded that there was "insufficient cogent evidence of the family circumstances to show that without the financial support their essential living needs could not be met." That was an assessment of the evidence which was reasonably opened to the FtTJ to make.

25. Insofar as the grounds argue that the FtTJ's assessment of £250 was not adequate as no evidence of comparative living standards had been provided, the onus was on the appellants to demonstrate the financial dependency was necessary for their essential living needs and in this context the judge did not accept that they had demonstrated this by reference to their own social and financial circumstances in Pakistan.

26. I also consider that the grounds misread the FtTJ's assessment of the evidence at paragraph [17] where it is stated that the judge was referring to a comparison of the living costs between Pakistan and the UK and as such this was unreasonable. In fact, the judge was not stating that but was simply making the point that on the evidence as to their circumstances in Pakistan and by reference to their essential living needs, that evidence was lacking. Alongside that, the FtTJ identified other aspects of the evidence which was absent and which in his judgement undermined the claim of dependency.

27. At paragraph [17] the judge also identified the lack of earlier remittances prior to April 2018 and that there had been no evidence from Mr Arshad's brother explaining why he did not contribute to the household expenses or evidence his circumstances despite that being readily available and that no cogent explanation been provided as to why Mr Arshad was not working. The judge also identified in the documents that the expenses which were said to have been paid for had not been properly or reliably evidenced. In summary the judge

was not satisfied that the evidence before him was of sufficient cogency to demonstrate that their essential living needs were met by the sponsor. The reasons given by the FtTJ were one's that were reasonably open to him and were sustainable in the light of the evidence before the tribunal.

28. I deal now with the point articulated in the grant of permission and which has been relied upon and adopted by Mr Ahmed in his oral submissions before the tribunal. The grant and those submissions highlight the part of the FtTJ's assessment where he stated; "I accept that the money transfers identified in [13] above are regular, and that the money is sent from Mr Chughtai to Mrs Imran as that is what the documents say. I do not accept that it is their only income for the following interrelated reasons. I do not have to accept what Mrs Imran and Mr Arshad say just because they say it, especially where they have not been subject to cross-examination, which is now by no means unusual in the new remote ways of working ...".

29. Thus it is asserted that the judge perpetrated a procedural irregularity by requiring the appellants and the sponsor to be cross-examined before accepting the appellant's evidence as truthful. It is stated in the grounds and in the submissions that this was irrational and that it was not the responsibility of the appellants and the sponsor to be cross-examined and that the judge arguably imposed an unreasonable condition before resolving the issue. Whilst the grant of permission refers to the appellants and the sponsor not giving evidence, it is clear from the decision and the record of proceedings that the sponsor did give evidence and was cross examined by the presenting officer.

30. I have carefully considered the submission made in this regard and have done so in the light of paragraph 17 when read as a whole. In my judgement the grounds and the grant of permission misread what the FtTJ was stating at that part of paragraph 17. What the judge had stated was that an account provided in the witness statements did not have to be accepted simply because it was in a witness statement. The judge was in essence re-stating that the weight to be given to the evidence was to be determined by him in accordance with the evidence as a whole. The judge was not requiring them to be cross-examined before he accepted their evidence and in any event it was a matter for the appellants as to what evidence they sought to put before the tribunal.

31. From my reading of paragraph 17, I do not accept that the judge was suggesting that cross-examination was crucial before he could accept the evidence of dependency but that the judge was simply making the point the matter of the weight of the evidence was one for him and was to be determined in the light of that evidence. The judge then went on in his analysis to give reasons as to why he was not satisfied the evidence of dependency was made out and as the respondent submits the judge was entitled to consider the appellant's home/financial arrangements and the lack of evidence and explanation regarding the circumstances and alleged lack of contributions by others who

resided at the address. I am satisfied as the respondent submits that the judge was entitled to have regard to those factors in terms of assessing the veracity of the evidence and the issue of dependency.

32. As set out in the relevant jurisprudence and recently in the decision of Latayan v SSHD [2020] EWCA Civ 191, dependency is a question of fact. In that decision, at paragraph 23 the court cited the decision of SM (India) v ECO (Mumbai) [2009] EWCA Civ 1426 as follows:

> "23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket* Case C-1/05; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket* Case C-423/12; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC), dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426):
>
> > "19. … questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

> "… Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. …"
>
> 24. As to the approach to evidence, guidance was given by the Upper Tribunal in *Moneke and others (EEA - OFMs) Nigeria* [2011] UKUT 341 (IAC):
>
> > "41. Nevertheless dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in SM (India) (above) dependency means dependency in the sense used by the Court of Justice in the case of Lebon [1987] ECR 2811. For present purposes we accept that the definition of dependency is accurately captured by the current UKBA ECIs which read as follows at ch.5.12:
> >
> > > "*In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations:*

> *Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her **essential needs** - not in order to have a certain level of income.*
>
> *Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources.*
>
> *There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment.*
>
> *The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived."*

33. In Lim, the Court of Appeal stated at [25]:

> "In my judgment, this makes it unambiguously clear that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. There are numerous references in these paragraphs which are only consistent with a notion that the family member must need this support from his or her relatives in order to meet his or her basic needs. "

and at [32]:

> "In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs."

34. The question of dependency as set out above entails a situation of real dependence in which the family members, in this case the appellants, having regard to their financial and social conditions are not in a position to support themselves thus needing the material support of the sponsor in order to meet their essential needs. It is also plain that questions of dependency must not be reduced to a bare calculation of financial dependency but to be construed broadly to involve holistic examination of a number of factors and so as to establish whether there is a dependence that is genuine. The judge correctly identified that proof of dependency required the appellants to establish, on the balance of probabilities, that financial support from the sponsor was required in

order to meet the appellants' essential needs. It is plain from the FtTJ's assessment of the evidence that there were gaps in that evidence which had not been either adequately explained or evidenced and thus the FtTJ did not accept that the appellants were wholly reliant upon money received from the sponsor. In other words and set out above if the appellants can support themselves, there is no dependency even if they are given financial material support by the EU citizen as those additional resources are not necessary to enable them to meet their essential basic needs. I do not consider that the FtTJ applied the wrong test or that he applied too high a standard and was entitled to critically assess the evidence. Thus in summary, the judge did not reject the account of the appellants and the sponsor on the basis that they did not give evidence or were not cross-examined but that on the evidence before him properly analysed did not satisfy him that the appellants were properly dependent on the sponsor notwithstanding the evidence of the financial remittances.

35. For those reasons, I am not satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law. I therefore dismiss the appeals. The decision of the FtTJ shall stand.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and I therefore dismiss the appeals. The decision of the FtTJ shall stand.

Signed *Upper Tribunal Judge Reeds*

Dated: 31 August 2021

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.