



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/01808/2020  
EA/01809/2020  
EA/01812/2020  
EA/01813/2020  
EA/01815/2020

THE IMMIGRATION ACTS

Heard on 11<sup>th</sup> October 2021  
At Manchester Civil Justice Centre

Decision & Reasons Promulgated  
On 17<sup>th</sup> November 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Muhammad Arshad  
Shakil Arshad  
Master Muhammad Usman  
Master Ali Arshad  
Master Muhammad Bilal  
(no anonymity direction made)

Appellant

and

Entry Clearance Officer (UK)

Respondent

For the Appellant: Ms Patel, Counsel instructed by Lex Solicitors  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are all nationals of Pakistan. They are respectively a husband, wife and their three children. They each assert that they are entitled to enter and reside in the United Kingdom as the extended family members of an Austrian national who is exercising treaty rights. The Austrian national is Mr Muhammad Afzal, who is accepted to be the brother of the First Appellant.
2. In order to establish that they are the 'extended family members' of Mr Afzal the Appellants must meet the relevant requirements set out in Regulation 8 of the Immigration (European Economic Area) Regulations 2016:

**"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.

...

3. The Entry Clearance Officer (ECO) accepted DNA evidence establishing that Mr Afzal and Mr Arshad are brothers. In the refusal notice dated 24<sup>th</sup> January 2020 the ECO noted that the claim was based upon dependency: Regulation 8(2)(b)(i). The applications were supported by money transfer receipts issued by a company called 'Small World', a transfer business based in Khan Travel in Bolton. The ECO attempted to verify two of these transactions by using the website for Small World but that said that these transfers did not exist. Consequently they could not be relied upon to demonstrate dependency. The applicants had failed to provide any other evidence. The ECO noted that this was despite having made three previous attempts to gain entry under this route and on each occasion being refused for lack of evidence.
4. The Appellants appealed and the matter came before First-tier Tribunal Judge O.R Williams. Judge Williams noted the position of the ECO, as articulated by Presenting Officer Ms Molomo, that whilst there appeared to have been some confusion about the transaction number checked on the Small World website, this was in fact irrelevant because when the correct number was entered it still

showed as “transaction not existing”. Judge Williams found that the Appellants had offered no satisfactory explanation for this finding. What they had said was vague and contradictory. They had relied upon an undated letter from the ‘Director’ of the shop in Bolton from where the transfers were allegedly made, which referred the reader to the website, but then the same Director had allegedly informed the Sponsor that the website would only permit access by licence holders. As to this latter assertion Judge Williams rejected it as inconsistent with the website itself which was plainly aimed at permitting anyone with the relevant access code to track the transaction in question. Judge Williams was driven to conclude that the purported transactions were “bogus/false”. As to an argument advanced by Counsel that any wrongdoing that might exist must be the fault of the Sponsor, not the Appellants, Judge Williams rejected this on the grounds that it was the Appellants themselves who sought to rely on the bogus money transfers in their applications, and in doing so must have known them to be false since they had received no money. The Judge further commented that it was clear that the Sponsor did not have the means to support his brother and family since he himself was in receipt of tax credit; any money transferred cannot have actually been required to meet essential needs since Pakistani tax records demonstrated that the First Appellant was in fact running a family business; finally it was noted that there was no evidence at all post dating the refusal.

### **The Grounds of Appeal: Discussion and Findings**

5. The Appellants submit that the decision of Judge Williams is flawed for a number of errors of law. It is convenient that I set these alleged errors, the ECO’s defence of the decision, and my findings, out thematically.

#### *Failure to Take Material Evidence Into Account*

6. The centrepiece of the grounds is the allegation that in its discussion of the money transfers the First-tier Tribunal failed to have regard to the First Appellant’s Pakistani ‘bank statements’ which showed receipt of the funds. Further there was a failure to consider the evidence of other money transfers which had not been challenged by the Respondent.
7. I deal first with the ‘bank statements’, identified by Ms Patel as the two documents appearing at pages 288 and 289 of the Appellants’ bundle. Both are headed ‘United Bank Limited’. The first document relates to a transaction made on the 24<sup>th</sup> April 2019, when Muhammad Afzal remitted to Muhammad Arshad the sum of Rs 26,607, at the time the equivalent of about £145. A ‘unique remitter ID’ is recorded as being 263688596006. The second document refers to the 26<sup>th</sup> May 2019 when Muhammad Afzal remitted to Muhammad Arshad the sum of approximately Rs 55,000 (the exact amount is illegible due to the poor copying). This converted, at that date, to some £280. A ‘remitter unique ID’ is this time given as 26(x)478255939 (again illegible). This, submits Ms Patel,

corresponds with the first of the impugned Small World transfers, which bear the same details in respect of the dates, ID numbers and sums in rupees: had Judge Williams had regard to these documents, he would not, or could not, have reached the conclusion that he did about those claimed transactions.

8. The documents referred to are not free from problems. As Ms Patel acknowledged in her submissions, they are not in fact, as her grounds assert, bank statements. They do not show monies deposited in any account attached to the First Appellant. They are no more than receipts from the Pakistani end of the transaction, which bear the same reference number that could not be checked at the UK end. In light of that, Mr Tan submitted that they add little to the Appellants' case. Furthermore they do not confirm that any money was transferred by Small World, nor indeed from Khan Travel (the shop in Bolton where the money is deposited) nor LCC Trans-Sending, the mother company identified on the face of the Small World Receipts. The documents Ms Patel relied upon refer to two completely different entities: 'Overseas Express Ltd' is identified as the transferring agent, and United Bank Limited hands over the cash.
9. All of that said, they were documents that were before the First-tier Tribunal. The dates, sums, persons involved and reference number are all the same. Even having regard to the problems I have identified, they were at least *capable* of supporting the contention that the claim that one brother sent money to another was true. They were not considered at all by the First-tier Tribunal.
10. Perhaps more significantly, the Tribunal decision does not identify or discuss the other evidence of remittances being made. Ms Patel took me to the bundle showing 7 other Small World transfers between October 2019 and February 2020; each of these 'UK end' transactions is mirrored by a 'Pakistani end' receipt of the sort discussed at §§ 7 & 8 above. Nearer to the date of hearing were a number of other remittance receipts issued by Ria Financial Services Limited. Other than a fleeting acknowledgment of the existence of the latter [at the Tribunal's §25] there are no findings on any of that. The First-tier Tribunal's rationale for that omission appears to have been that the fraud having been established, little weight could be attached to anything else since the Sponsor could not be trusted. I am not satisfied that this was a permissible approach. First because the findings of fraud were made without regard to the 'Pakistani end' receipts, and in the end on no more than the fact that the Small World website yielded no results.
11. I am satisfied that ground (i) is made out, and accordingly that the decision must be set aside.

*Unfairness*

12. It follows that I need only deal briefly with the remaining grounds.

13. Ms Patel also had something to say about the way that the case had progressed in the First-tier Tribunal. She pointed out that the 'document verification report' relied upon by the ECO had only been made available on the Friday evening before the hearing, which had taken place on the Monday morning. Her instructing solicitors had therefore had no time at all, within working hours, to take instructions on the allegations therein and to respond to them. In light of that they had sought to rebut the allegations by the production of evidence in the 24 hours after the hearing. That evidence does not appear to have been considered by the Tribunal.
14. In his submissions Mr Tan provided a complete answer to these complaints. First of all the veracity of those two Small World receipts had been placed in issue by the ECO in the refusal notices in January 2020. This was not therefore a case where the Appellants had been belatedly ambushed by a new forensic challenge. Second, by her own admission Ms Patel was in no way disadvantaged by the document verification information provided by the PO: as far as she was concerned she had an answer to it, and that was why no adjournment had been sought on the day.
15. There was, in reality, no unfairness arising.

*Reliance on Irrelevant Considerations*

16. In refusing these applications the ECO had noted a previous ground for refusal: that Mr Afzal was on so low an income in the UK that he had to rely on state benefits to support himself and his family here. At the date of that decision he was receiving working and family tax credits of approximately £700 per month. In dismissing the appeals Judge Williams also noted that factor, in the context of his assessment of the overall credibility of the claim that there was a real dependency here. In this regard Judge Williams also noted, in the same paragraph, that the First Appellant is believed by the Pakistani authorities to be running his own business.
17. Ms Patel argues that this reasoning is impermissible because it in effect introduces a minimum income or maintenance requirement, a creature of the rules which has no place in the forest of EU law.
18. I reject that contention. The ECO, and the First-tier Tribunal, were required to weigh all of the evidence before them and determine whether or not the claimed dependency was proven. They were in my view plainly entitled to take into account the fact that for a certain period – when dependency had been asserted – the Sponsor was earning so little that he was forced to resort to receiving funds from the British taxpayer. This was a matter of *fact* which was obviously relevant to whether there was genuinely a financial dependency here. In taking them into account neither ECO nor Tribunal introduced a further requirement or legal hurdle. I would further observe that the relevance of the tax credits in this respect does not appear to have been lost on whoever prepared the applications for the Appellants, since the covering letter thereto

describes the Sponsor's business as "very successful" and stresses that he owns his own home.

### *Conclusions*

19. As I set out above, I am satisfied that the decision of the First-tier Tribunal must be set aside for a failure to have regard to material evidence. The decision in this appeal needs to be remade. It is not, as Ms Patel agreed, as simple as the Appellants pointing to the money transfers. Even if it were to be accepted that Mr Afzal has sent many hundreds, perhaps thousands, of pounds to Pakistan over the years, this does not establish that his brother Mr Arshad is using that money to meet the essential needs of himself and his family. People remit money to their countries of origin for many reasons – they may be saving, they may be investing it in property, or using it to pay staff, for instance. The mere fact that Mr Arshad received that money, if established, will not be enough to establish a dependency exists here. That is a far broader enquiry which will require a judge to hear oral evidence from the Sponsor (and any others the Appellants may wish to call) and evaluate whether the claimed dependency is, on the balance of probabilities, made out. That will in my view entail an examination of the evidence from the Pakistani Board of Revenue who list the First Appellant as an 'active taxpayer'; the Appellants may also wish to address the fact that the 'Pakistani end' money receipts describe him as 'salaried' whereas he claims to have been unemployed for many years.

### **Decisions**

20. The decision of the First-tier Tribunal is set aside.
21. The decision in the appeal is to be remade in the First-tier Tribunal by a judge other than Judge O.R Williams.
22. There is no order for anonymity.

Upper Tribunal Judge Bruce  
11<sup>th</sup> October 2021