



Upper Tribunal

**(Immigration and Asylum Chamber)
EA/04076/2016 (P)**

Appeal Number:

THE IMMIGRATION ACTS

Decided under rule 34 (P)

**Decision & Reasons
Promulgated**

On 29 October 2020

On 4 November 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**MUHAMMAD NAUMAN KHAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation (by way of written submissions)

For the appellant: No submissions received

For the respondent: No submissions received

DECISION AND REASONS

Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Jackson on 11 July 2020 against the determination of First-tier Tribunal Judge Verghis, promulgated after a long delay on 3 January 2020 following a hearing at Hatton Cross on 8 November 2019.
2. The appellant is a Pakistani national born on 17 August 1989. He entered the UK as a student in January 2011 and then applied for a residence permit as the extended family member of his maternal uncle (the sponsor). He appeals against the respondent's decision of 21 March 2016 to refuse his application under reg. 8(2) of the EEA Regulations 2016. The application was refused because the respondent did not accept that dependency on the sponsor and/or residency with him at any time had been established by the evidence. The respondent noted that the appellant had not referred to the sponsor at all in his student applications although he now claimed dependency upon him and also found that the low sum allegedly sent to the appellant over the years could not have reasonably covered all these expenses as was claimed.
3. The appellant did not seek an oral hearing and his appeal came before Judge Verghis for determination on the papers. It was dismissed.
4. The appellant successfully sought permission to appeal. Although this was refused by First-tier Tribunal Judge Chohan on 6 April 2020, it was granted upon renewal to the Upper Tribunal.

Covid-19 crisis: preliminary matters

5. The appeal would then have normally been listed for hearing but due to the pandemic this could not be done and instead the grant of permission, sent out on 10 August 2020, included directions in which Upper Tribunal Judge Jackson expressed the view that the appeal could be decided on the papers. She also indicated that her provisional view was that the appeal should be remitted to the First-tier Tribunal to be heard afresh due to errors of law in the First-tier Tribunal Judge's decision. The parties were invited to put forward any objections they may have within 21 days. Neither party has put forward any objection and I now proceed to determine the matter on the papers.

Discussion and conclusions

6. I have considered the evidence, the determination, the grounds for permission and the grant of permission.
7. The grounds for permission argued that the judge erred in law by (i) finding that the sponsor's financial remittances to the appellant and his family were, in respect of the appellant, gestures of affection when the appellant's evidence had been that the family depended on this income as they received no support from the appellant's father; (ii) finding that there had been no dependency in the UK in circumstances where it was accepted that the appellant had always lived with the sponsor who had paid for all utilities and living expenses; and (iii) finding that the appellant had failed to establish a reason for dependency on the sponsor by referring to his education, immigration status, health and ties to Pakistan.
8. As pointed out by Upper Tribunal Judge Jackson in her grant of permission, the judge is entirely unclear in her determination as to what law and requirements were applied to the case and confuses the EEA Regulations with a human rights claim under the Immigration Rules and/or the ECHR. In her self direction at paragraph 3 she refers to paragraph 276B (on long residence) and 276ADE (private life grounds) as well as to section 117A-D of the Nationality, Immigration and Asylum Act 2002. No application was made under those provisions. It may be that the judge used a previous template and omitted to amend the legal requirements. If so, that shows a complete lack of care on the part of the judge which is unacceptable. More worryingly, however, at paragraph 19 the judge refers to and cites from Kugathas [2003] EWCA Civ 31 and at paragraphs 25 and 26 she applies the principles therein even though they have no bearing on the appeal before her. As Judge Jackson observed, the judge gets into a complete muddle as to the issues before her.
9. Additionally, there is no proper assessment of whether the appellant meets the requirements of the Regulations as an extended family member, no findings as to dependency by consideration of relevant factors and no findings on whether the appellant was/is a member of the sponsor's household. Instead, the judge focuses on a variety of immaterial and irrelevant factors in reaching her conclusions and in Judge Jackson's words reaches a "decision (that) is almost entirely incomprehensible".
10. For these reasons, I find that the judge's decision contains errors of law which render it unsustainable. It is set aside in its entirety. Neither party has sought to preserve any findings and the matter is thus remitted for a *de novo* hearing to the First-tier Tribunal.

Decision

11. The decision of the First-tier Tribunal contains errors of law and it is set aside. A fresh decision shall be made by another judge of the First-tier Tribunal.

Anonymity

12. No request has been made at any time for an anonymity order and I see no reason to make one.

Directions

13. Further directions for the hearing shall be issued by the relevant Tribunal in due course and shall take account of the appellant's initial request for the appeal to be determined on the papers.

Signed

R. Kekić
Upper Tribunal Judge

Date: 29 October 2020