



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

Appeal Number:

UI-2022-000356; EA/01817/2021  
UI-2022-000357; EA/01821/2021  
UI-2022-000358; EA/01824/2021  
UI-2022-000359; EA/01827/2021  
UI-2022-000360; EA/01830/2021  
UI-2022-000361; EA/01831/2021

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On the 2 August 2022**

**Decision & Reasons Promulgated  
On the 24 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**RIFFAT KHANAM  
KAINAT AKRAM  
MARYAM AKRAM  
SOFIA AKRAM  
IBRAHIM AKRAM  
HAIDER ALI**

**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Young, Senior Home Office Presenting Officer  
For the Respondent: Mr Shea

## **DECISION AND REASONS**

1. I shall refer to the appellant as the 'respondent' and the respondents as the 'appellants', as they appeared respectively before the First-tier Tribunal. The first appellant is the mother of the other appellants and I shall hereafter refer to her as 'the appellant'. The appellant was born on 20 December 1970 and is a female citizen of Pakistan. The appellants applied for an EEA family permit to join the EEA sponsor as extended family members. By a decision of the Entry Clearance Officer dated 13 January 2021, the applications were refused. On appeal to the First-tier Tribunal, the appeals were allowed. The Entry Clearance Officer now appeals, with permission to the Upper Tribunal.
2. I find that the decision of the First-tier Tribunal is vitiated by legal error for the following reasons.
3. First, Ms Young is correct to say that the wider financial circumstances of the family had been raised by the Entry Clearance Officer in the notice of refusal:

On your application you state that your sponsor has resided in the UK since 01 January 2019 and that you are financially dependent on them. As evidence of this you have provided money transfer remittance receipts from your sponsor to you, which cover the period October 2019 - September 2020. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.

The act of transferring money is not in itself evidence that it is needed by the recipient. In addition to money transfer receipts, this office would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met. *[my emphasis]*

4. That the appellant had, by the time the appeal reached the First-tier Tribunal, still not provided evidence of the family's circumstances plainly concerned the judge:

32. I accept that the joint family approach described is consistent with cultural norms. Neither the sponsor nor his brother however gave any detail in their witness statements about the overall financial circumstances of the people living together in the family home, expenditure and outgoings. However, from the oral evidence the picture became a little clearer. The sponsor, Mr Afzal, had originally lived in a "big house" in Pakistan, the family home. He stated that four or five brothers lived together. He had supported his brother, Mr Akram, prior to him travelling to the UK with an EEA family permit.

...

34. The difficulty with answering that question is the lack of information about the other income going into the household and an overview of the essential needs of the appellants or, simply expressed,

a calculation of family expenditure and income available other than the sponsor's payments. It is likely in a joint household where several families live together that expenditure and income is pooled at least to a degree.

35. I am not satisfied that the full picture has been provided about the income/expenditure of the family. As they operate on a joint family system basis, as both the sponsor and his brother confirmed, it might be expected that there would be witness evidence dealing with these issues together with documentary evidence. The witness statements are silent on the matter. From the oral evidence and clarification, there are likely to be three income streams coming into the household from the three other brothers. I accept that the lead appellant, the mother of the children, does not work due to cultural reasons and is unlikely to have any income of her own.

5. Whilst the decision of the judge spends several paragraphs highlighting the deficiencies in the application/appeal, it is unclear why nonetheless the judge found that dependency had been established. It was, of course, open to the judge to accept the oral evidence which he heard but, in the light of the problems in the evidence which he had identified, he has failed to explain why, on the balance of probabilities, he allowed the appeal. In short, he failed to explain why the oral evidence was so compelling that it outweighed the absence of evidence of the family's financial circumstances. The oral evidence may, as the judge says, have made the position 'a little clearer'; it is not clear why it made it so clear that the judge accepted the existence of dependency.
6. Secondly, I agree with Ms Young that the judge fell further into error at [42]:

42. There are some concerns as to the sustainability of the financial support given the sponsor's low pay. However, these are issues for the Respondent to no doubt review following this decision. I am satisfied, on the balance of probabilities, that there is a dependency and that the definition of extended family member at regulation 8(2) is met and on that basis allow the appeal under the 2016 Regulations.

Whilst I acknowledge that the judge had to determine the matter of dependency at the material time of the appeal rather than in the future I agree with Ms Young that the judge has, at [42], once again expressed his concerns as to the existence of dependency without resolving those concerns either by dismissing the appeal or by explaining, by reference to the evidence, why they should be allayed. Indeed, the judge appears to delegate the resolution of the issue to the respondent. It was for the judge to resolve all issues in the appeal and he has failed to do so.

7. The decision of the First-tier Tribunal is set aside. I have considered whether to remake the decision dismissing the appellants' appeal (Ms Young made no submissions on this point) but I have decided that the decision should be remade following a further hearing which I find should be conducted in the First-tier Tribunal.

## **Notice of Decision**

The Secretary of State's appeal is allowed. The decision of the First-tier Tribunal is set aside. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

LISTING DIRECTIONS: Return to First-tier Tribunal; Manchester; Not Judge Andrew Davies; 2 hours; If an interpreter is required, the appellants' solicitors should apply immediately to the First-tier Tribunal for an interpreter to be provided;

Signed  
Upper Tribunal Judge Lane

Date 29 September 2022