



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-002480  
EA/10503/2021**

**UI-2022-002481 EA/10504/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 14 September 2022**

**Decision & Reasons Promulgated  
On the 19 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MISS ESHAAL QAISER  
MR WALEED QAISER  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr A Maqsood, Counsel, instructed via Direct Access  
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants, both citizens of Pakistan, appeal against the decision of First-tier Tribunal Judge Juss ("the judge"), promulgated on 7 March 2022. By that decision the judge dismissed their linked appeals against the Respondent's refusal to issue them with family permits pursuant to the Immigration (European Economic Area) Regulations 2016 ("the Regulations").

2. The Appellants, who are brother and sister, applied on the basis of claimed dependency on an EEA national resident in the United Kingdom (the Sponsor, a paternal uncle and Italian citizen).
3. I can summarise the judge's findings briefly. He did not accept the Appellants' claim that their father had gone missing in 2015, or at all, or that their mother had abdicated responsibility for their care. Reasons for this were set out at paragraph 20 of his decision. Further, or alternatively, the judge did not accept that the Appellants had been in receipt of funds which went to meet their essential living needs. Reasons for this conclusion were set out at paragraphs 21 - 24 of the decision.
4. The judge's decision was challenged on eight separate grounds, although a number of them overlap. In essence, it was said that the judge took certain issues against the Appellants which had not featured in the Respondent's refusal and which had not been put to the Sponsor or Counsel at the hearing; that his reasons for rejecting the evidence relating to the father and mother were unsound; that he had seemingly applied personal knowledge to the case; that he had misapplied the appropriate legal test relating to essential living needs; and had erred in his approach to the question of whether the Sponsor had indeed provided relevant funds to the Appellants. Permission to appeal was granted on all grounds.
5. Following this, the Respondent provided a Rule 24 response, dated 28 June 2022, by which she accepted that the judge had committed material errors of law. Unfortunately, this document was not brought to my attention until the hearing. In the event, the Rule 24 response corresponds with my firm provisional view of this matter, namely that the judge did commit a number of material errors of law, as set out in the grounds of appeal.
6. Without providing detailed reasons (in light of the Respondent's position), I summarise my conclusions thus. The judge clearly failed to deal with relevant evidence relating to the position of the father and mother and then appeared to take irrelevant matters into account, specifically whether or not an adoption had taken place (this was never the Appellants' case). The judge's analysis of funds remitted by the Sponsor was, with respect, unclear. The reader is clearly left uncertain as to whether the judge was finding that no funds had been provided at all, or simply that they did not relate to the essential living needs.
7. One aspect of the judge's reasoning in this regard was predicated on the basis that the Appellants' parents had not disappeared, a finding which I have already concluded was flawed. The judge failed to appreciate that the dependency test does not require a relevant EEA national to fund *all* of an individual's essential living needs: the test is fact-sensitive and involves asking whether, without the provision of funds, the individual's essential living needs could not be met. In the present case, the judge failed to make clear findings and appeared to be requiring that all such living needs were met solely by the Sponsor's remittances.

8. The remaining grounds of challenge need not be addressed.
9. What I have already said is sufficient for the judge's decision to be set aside.
10. Both parties were agreed that the appropriate method of disposal would be to remit these appeals to the First-tier Tribunal for a complete re-hearing with no preserved findings of fact. I agree. There needs to be a wholesale reassessment of the evidence in this case and the appropriate forum is the First-tier Tribunal, having regard to paragraph 7.2 of the Practice Statements.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

### **Directions to the First-tier Tribunal**

- (1) These linked appeals are remitted to the First-tier Tribunal (Birmingham hearing centre) for a complete re-hearing, with no preserved findings of fact;
- (2) The remitted hearing shall not be conducted by First-tier Tribunal Judge Juss.

Signed H Norton-Taylor

Date: 22 September 2022

Upper Tribunal Judge Norton-Taylor