



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

Appeal Numbers:
UI-2022-002791; EA/13123/2021
UI-2022-002792; EA/09462/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 11th October 2022**

**Decision & Reasons Promulgated
On 4th December 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR IMRAN MUHAMMAD
MR ABDUL REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Pinder, instructed by Addison & Khan Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal against a decision of First-tier Tribunal Judge Hussain (the judge), who dismissed the appellants' appeals against the Entry Clearance Officer's decisions to refuse to grant entry visas in the form of family permits under Regulation 7 of the Immigration (EEA) Regulations 2016. The appellants are both overseas.

2. The appellants are citizens of Pakistan and both over the age of 21 and are the sons of the sponsor, an Italian national who has been exercising Treaty rights in the UK. The first appellant is 34 and the second appellant is 39. The Entry Clearance Officer was not satisfied that the appellants were dependent on their father/sponsor as Regulation 7 stipulates because the appellants are over the age of 21.
3. The judge stated that he was not satisfied that the appellants were genuinely dependent and found it was more likely than not that the remittance receipts had been produced to show dependency ([16]). The judge did not accept that a 67-year-old man was able to be actively working in Italy and continued to do so and yet the appellants, aged 39 and 32, were not able to find any work in there. They had been in Italy since 2006 and the idea that they continued to live there and not be able to find work was implausible. The judge found at [18]: “In my view, it is more likely than not that the two appellants being bodied [sic], grown-up men are in employment through which they meet their own needs”, [18]. The judge also stated at [19]:

“19. My finding that the appellants are not genuinely dependent on their sponsor is further supported by his earnings. The sponsor’s P60 for the year ending 2021 showed a gross income of £10,000. This is contrary to what is stated in the appellants’ statement, namely, that the sponsor earns £30,000 a year. It is hardly likely that a person who only earns £10,000 a year is also [able to] financially able to sustain two grown-up men in a country with comparable cost of living.”

4. It was clear from the decision that the sole issue was that of dependency.
5. The grounds were:

Ground 1: Irrationality

6. The judge appeared to have dismissed the appellants’ case on dependency for reasons of plausibility, finding that it was implausible that the appellants could not obtain employment, speak Italian and be self-sufficient but no evidence was referred to in support of such a finding and there was no positive evidence submitted by the respondent to dispute the appellants’ case that they were not in employment.
7. The sponsor had explained that his sons were lacking in education, and it is submitted that the explanation was not so unreasonable to support a finding of implausibility and the Tribunal erred in law.
8. The Tribunal accepted that funds were being remitted to the appellants and the Tribunal made no findings of fact in relation to the accommodation being provided by the sponsor. The provision of accommodation would come some way, if not all the way, in establishing that the sponsor was providing for the appellants’ essential needs.

Ground 2: There was a material misdirection

9. It was well-established that the relevant test to determine dependency in Community law was whether an applicant needs the financial support of the sponsor to meet their essential needs. Such dependency could be of choice. By stating at [16] of the determination that the Tribunal was “not satisfied that the appellants are genuinely dependent on their sponsor” and that “*it is more likely than not that the remittance receipts have been produced to show dependency, rather than the appellants’ requiring the sponsor’s financial support to meet their essential needs*” it was submitted that the Tribunal had applied the wrong test.
10. The Tribunal had clearly required a “genuine” reason for the appellants needing the sponsor’s financial support and has required the appellants to demonstrate that they cannot work. That was a material error of law and contrary to leading and well-established authorities which the Tribunal should have been familiar with such as **SM (India) [2009] EWCA Civ 1426**, [20] to [21], and **Reyes v Migrationsverket 2014/C-423/12**, which was cited in **Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383**, [23] to [27].

Ground 3: Error of fact/irrationality/procedural unfairness

11. At [19] of the determination the Tribunal was concerned that the documentary evidence of the sponsor’s income, a P60 year ending 2021 showing £10,000 earned, did not support the sponsor’s and appellants’ evidence that his annual income is £30,000.
12. The documentary evidence of the sponsor’s employment included his contract and a letter from his employment, both confirming a start date of 6th December 2020. The P60 referred to by the Tribunal at [19] is year ending 31st March 2021 and plainly, this document did not cover a full year of the sponsor’s income but was consistent with a gross annual income of £30,000, so about four months later he would have earned £30,000. The Tribunal’s finding was therefore irrational and an error of fact which had led the Tribunal to misdirect himself on the evidence, influencing his findings as to whether the appellants were plausibly dependent on the sponsor.
13. Moreover, the Tribunal failed to engage with the more recent payslips of the sponsor and also contained in the appellants’ bundle 113 to 124, which did support a reasonable and sufficient income being earned, particularly in the light of the legal principles applicable in this area under Community law.
14. For those reasons, the decision was flawed.

The Hearing

15. Ms Pinder relied on the grounds but also submitted that there were no findings in relation to the evidence by the judge save for plausibility in relation to the credibility of the sponsor's income and the appellants' credibility which was centred on their age and length of residence in Italy. The judge did not accept that they would be unable to support themselves or that the appellants could not find work because they lacked education stating that there were manual tasks which could be accomplished it was not plausible that (as the sponsor stated) they could not speak Italian having lived there since 2006 (first appellant) and 2010 (second appellant) [17] . It was submitted the findings were irrational but that ground 1 should be read in conjunction with ground 2. The case law underlined that there was no need positively to demonstrate that the appellants were not able to support themselves and it could be a matter of choice. In relation to ground 3 there was an error of fact surrounding the sponsor's income and the summary by the judge at [19] returned to the earlier findings.
16. When referred to the payslips to identify any error in the decision, Ms Pinder submitted that the P60 confirmed the tax paid and that payslips could be subject to error and the bank statements were difficult to make out.
17. She submitted the findings were not satisfactory in relation to the sponsor's earnings. There were too many question marks in addressing the approach to the issue of dependency.
18. Mr Clarke submitted in relation to the first ground on irrationality that the threshold was high, and I was referred to [2] of **Volpi & Volpi [2022] EWCA Civ 464** which stated:
 - “2. *The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:*
 - i) *An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.*
 - ii) *The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.*
 - iii) *An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact*

that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

- iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.*
- v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.*
- vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."*

Mr Clarke submitted there was no irrationality in the terms of the findings and how the judge approached the appeal. He noted the ages of the appellants and the time they had spent in Italy and their claim to be unable to work and that they did not speak Italian. The judge looked at the explanation but concluded that despite the fact that they were not formally educated it was not plausible that there was no manual work. This was not a case where the appellants were not working out of choice, but their assertion was that they could not secure work which the judge did not accept. As such, ground 1 fell away.

19. In terms of ground 2 that the judge had misdirected himself in law, the ground was misconceived. The judge specifically found at [18] that the appellants being (able)-bodied, grown-up men were in employment through which they met their own needs. As per **Lim** at [18] and [32], the issue was regarding choice. If the appellant could support himself there was no dependency but if he could not support himself the court would not ask why. It did not bite in the instant appeal because the judge found that the appellants were working at [18].
20. Ground 3 took the matter no further forward because the findings of the judge in [14] to [18] were sufficient and even if there were an error on the sponsor's earnings, that was possibly an afterthought.
21. Ms Pinder responded that the "afterthought", as Mr Clarke referred to it, was put forward as a contributory factor in relation to the first question on dependency and the sponsor's earnings. She referred to the sponsor's oral evidence at [9] and [10] and the sponsor was not asked about his own income. At the hearing I did point out that the documentary evidence of

the sponsor's income, of which he should have known because it was evidence submitted by the appellants themselves, in fact confirmed that the sponsor did have an income as at January 2022 of just over £10,000.

Analysis

22. Grounds 1 and 2 are to an extent interlinked. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412 or as in this case irrationality. The judge considered the relevant material, and it is not arguable that the use of 'plausibility' when considering the standard of proof was in error or rendered the decision irrational.
23. The judge clearly took into account the receipts of remittances and that can be seen at [16]. Although he states, "the amounts and intervals vary", there is no doubt that the judge considered the evidence in the round. He did not accept that the appellants were dependent on the sponsor for sound reasons because the judge did not accept that the appellants having lived in Italy since 2006 and at their age, had been unable to find work or unable to speak Italian; it was open to the judge to find that simply implausible.
24. It is clear from the case law that the question of dependency is fact-sensitive and that is the approach the judge adopted. As stated in **Singh v Secretary of State for the Home Department [2022] EWCA Civ 1054** at [22]:

*"22. This reflects the CJEU's words in **Rahman**:*

'23. It is incumbent upon the competent authority, when undertaking that examination of the applicant's personal circumstances, to take account of the various factors that may be relevant in the particular case.'
25. Turning to the question of accommodation, as set out in **Singh** at [19]:

"...the fact some financial provision was made and that [the applicants] were accommodated in the family home would not be sufficient in themselves to establish dependency for the purposes of the Directive."
26. Nothing in the judge's approach reached the high threshold of irrationality.
27. In **Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383** the court considered the question of dependency in relation to Regulation 7(1) (c) of the EEA Regulations 2006. The court considered various case law including **Jia v Migrationsverket [2007] QB 545**, which confirmed that "the status of dependent family member is the result of a factual situation characterised by the fact that material support for that family member is

provided by the Community national” and then at [36] of **Jia**: “According to the court, there is no need to determine the reasons for recourse to that support or to raise the question whether the person concerned is able to support himself by taking up paid employment.”

28. **Lim** confirmed at [20], however, that “it is not necessary for a person to show he cannot work before claiming dependency”.

29. At [30] Lord Justice Elias stated “even without the assistance of the judgment in **Reyes**, I would have thought that the concept of dependency must mean that the claimant is not financially independent and therefore requires support” and further at [32] he added:

“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.”

30. The judge he did not accept that the appellants, having lived in Italy since 2006 and at their age, even without formal education, as able-bodied individuals were not without work. In effect, if the appellants can support themselves, as the judge found here, there is no dependency, and the question of choice does not arise. Indeed, I note in the reasons for refusal for Abdul Rehman it was confirmed that in an application to enter the United Kingdom in December 2020 (which was refused) he stated that he owned a jewellery factory and was not dependent on his parents for financial support.

31. In relation to the first and second grounds, it was entirely open to the judge to reject the evidence that they had never worked. He made a finding on the facts as he saw them that the “two appellants being able-bodied, grown-up men are in employment through which they meet their own needs”. Following the approach in **Volpi** there is no arguable error of law in relation to grounds 1 and 2.

32. Even if that were not the case, turning to ground 3, the judge stated this:

“19. My finding that the appellants are not genuinely dependent on their sponsor is further supported by his earnings. The sponsor’s

P60 for the year ending 2021 showed a gross income of £10,000. This is contrary to what is stated in the appellants' statement, namely, that the sponsor earns £30,000 a year. It is hardly likely that a person who only earns £10,000 a year is also able to financially able to sustain two grown-up men in a country with comparable cost of living."

Again, the judge found the evidence implausible on the facts. It was submitted that the judge erred in assessing the facts and thus was procedurally unfair by failing to engage with the more recent payslips of the sponsor, which, it was asserted in the grounds, supported a reasonable and sufficient income being earned.

33. In her oral representations, Ms Pinder submitted that the assessment of the sponsor's income was a contributory factor in the overall assessment. It is correct that the judge did state that the P60 for the year ending 2021 showed a gross income of £10,000 and it is correct that the employment letter confirmed a start date of 6th December 2020 and four months' pay would equate to £10,000 but over the year this would equate to £30,000. However, looking at the payslips, as I pointed out at the hearing, the payslip for 31st January 2022 showed that the sponsor had a gross taxable income of only £10,440. His gross taxable income on his payslip of 30th November 2021 was £7,668.30. Both of those payslips were issued by Tanishque Ltd, the father's said employer. That was the employer said to have issued the letter of employment and there was no indication of any other employer. The payslip of 30th November 2021 shows a net pay of £772.14 (apparently no tax was paid), similarly on 31st December 2021. It is clear that the bank statements did not reflect the similar monthly earnings from a year previous and it was clear that the sponsor's income was declining over the relevant tax year 2021/2022.
34. I state this not to make fresh findings but to indicate that even if the only used the sponsor's P60 for the year ending 2021, the actual income shown by the payslips from 2022 and the bank statements to December 2021 did not reflect an income far higher than approximately £10,400. The evidence did not show the sponsor earning £30,000 per annum as claimed. As such, any error on behalf of the judge is not material and it was open to him to find that a person who only earns approximately £10,000 a year was also able financially to sustain two grown-up men in a country with a comparable cost of living.
35. This was, as Ms Pinder submitted, a contributory factor for the finding that the appellants were not dependent on their sponsor.
36. For these reasons, I find that there is no error of law in the First-tier Tribunal decision and the decision shall stand. The appeal remains dismissed.

Notice of Decision

The appeals remain dismissed

No anonymity direction is made.

Signed Helen Rimington

Date 31st October 2022

Upper Tribunal Judge Rimington