



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

Appeal Numbers: UI-2022-001680
& UI-2022-001682
(EA/00549/2021 & EA/00459/2021)

THE IMMIGRATION ACTS

**Heard at: Field House
On : 11 January 2023**

**Decision & Reasons Promulgated
On: 21 March 2023**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**BILAL HASAN
HAMZA GULZAR**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, instructed by M-R Solicitors LLP

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Pakistan, born on 30 November 2004 and 19 June 2002 respectively, and are brothers. They appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse to issue them with a family permit under the Immigration (European Economic Area) Regulations 2016 to enter the UK as the extended family members of the sponsor, their uncle Mudassar Nawaz, an Italian national exercising Treaty rights in the UK.

2. The appellants applied for family permits on 7 October 2019, claiming that their mother had passed away, that their father had remarried and no longer supported them and that their maternal uncle had taken over their guardianship and had been sending money to support them and that they were dependent upon him for their essential living needs.

3. The respondent refused the applications on 2 December 2020. In so doing, the respondent was not satisfied that the appellants had shown that they were financially dependent upon the sponsor or that the sponsor was in a position to support them financially and to meet their essential needs. The respondent noted the appellants' claim that the sponsor had resided in the UK since 1 September 2013 and that they were financially dependent upon him, but considered that the limited evidence, consisting of six money transfer remittance receipts, was not sufficient to prove that they were financially dependent upon him. The respondent noted that there was no evidence detailing the appellants' and their family's circumstances and that the sponsor's bank statements showed that his account was in deficit and that he was, at times, funded by an overdraft. The respondent considered the appellants' application under Regulation 8(1)(1A) of the 2016 Regulations on the basis that they claimed that the sponsor was their legal guardian, and accepted that the appellants were under 18 and that they were subject to a non-adoptive legal guardianship order for the purposes of Regulation 8(1)(1A) (a) and (b). However the respondent did not accept that the appellants met the requirements of Regulation 8(1)(1A)(c), (d) or (e). The respondent was not satisfied that they had lived with the EEA national since their placement under the guardianship order as they lived without their sponsor in Pakistan and was therefore also not satisfied that they had created a family life with their sponsor. The respondent found that, in the absence of more substantial and historic evidence of financial dependency, it could not be confirmed that the sponsor had assumed full parental responsibility of the appellants.

4. The appellants appealed against the decision and their appeal was heard by First-tier Tribunal Judge Cohen on 18 May 2021. Judge Cohen heard oral evidence from the sponsor and submissions from the legal representatives for both parties. He dismissed the appeals in a decision dated 11 January 2022 and promulgated on 12 January 2022. The judge noted that there was a significant discrepancy in the evidence before him in regard to the year of death of the appellants' mother and considered that the fact that the appellants' school reports dated between 2018 and 2020 had been counter-signed by their father was inconsistent with the claim that he had reneged on all responsibility for the appellants after re-marrying in 2016. The judge also noted that it remained the case that there was an absence of evidence of the appellants' financial circumstances, including income and expenditure, in Pakistan, and considered that to be indicative of the fact that the sponsor was not responsible for their essential living expenses. He considered there also to be a lack of evidence of emotional support from the sponsor and attached little weight to a psychiatrist report relied upon to show that the appellant suffered from depression and required the mental and psychological support of the sponsor. The judge found the lack of evidence prior to 2019 of the sponsor providing financial support to the appellants to be indicative of the fact that they were not dependent upon

him for their essential living needs. The judge also accorded little weight to the guardianship documentation, given that there was no evidence of the appellants' father being put on notice of the application for guardianship and no reference to their father or to their mother's death. The judge did not accept that the appellants were financially dependent upon the sponsor as claimed and considered that they could not meet the requirements of Regulation 8(1) (1A)(c), (d) or (e) as they had not resided with the sponsor post guardianship. The judge concluded that the requirements of the EEA Regulations 2016 were not met and he accordingly dismissed the appellants' appeals

5. The appellants sought permission to appeal to the Upper Tribunal on the following grounds. Firstly, that the appellants had been denied justice owing to the delay in the decision being made in their appeals following the hearing and the fact that the decision made it clear that the oral submissions and skeleton arguments had not been taken into consideration by the judge. Secondly, that the judge had made an error of law by failing to consider the various authorities which found that dependency did not have to be whole or main or necessary and that the judge's finding, that the appellants were not dependent upon the sponsor for their essential living needs, was not legally justified in light of the documentary evidence and oral evidence. Thirdly, that the judge had made an error of law by failing to address any of the legal questions and arguments raised in the skeleton argument. Fourthly, that the judge had made an error of law by failing to consider and make findings on the respondent's failure to undertake an extensive examination of the appellants' personal circumstances including their best interests in accordance with Regulation 8(8) of the EEA Regulations 2016. Fifthly, that the judge had failed to undertake a full and careful assessment of the evidence adduced regarding the question of dependency and the sponsor's income, by failing to appreciate the appellants were children who had no income of their own, by misreading the Order of the Guardian Judge which did refer to the appellants' father, and by finding a discrepancy in the year of the appellants' mother's death.

6. Permission was granted in the First-tier Tribunal by Judge Seelhoff in a decision dated 4 April 2022.

Hearing and Submissions

7. The matter then came before me for a hearing. Both parties made submissions.

8. Mr Nasim relied on Judge Seelhoff's grant of permission and made additional submissions. He submitted that Judge Cohen erred by finding there to be an additional requirement of emotional support when the caselaw made clear that the only requirement was financial support, as the appellant's skeleton had made clear. Mr Nasim submitted that the judge had erred by referring to Tanveer Ahmed, when the reliability of the documents had never been challenged or raised by the ECO or at the hearing. The judge had picked out two discrepancies in the evidence, but there were no discrepancies. The judge had erred by considering that the guardianship order did not refer to the appellants' father when it did. The judge failed to give proper consideration to

the sponsor's evidence of his involvement in the appellants' lives when their mother became sick and their father entered into a second marriage. The judge took issue with a lack of evidence of the appellants' income, but they did not have any income aside from the money they received from the sponsor. The judge had failed to deal with the matters set out in the appellants' skeleton argument and had materially erred in law in his decision.

9. Mr Tufan submitted that the relevant issue was whether the test in Lim (EEA – dependency) [2013] UKUT 437 had been met. It was still not clear at the hearing what the appellants' circumstances were, despite that having been raised by the ECO as a concern in the refusal decisions and he submitted that that went to the question of whether or not they were dependent upon the sponsor. There were also discrepancies in the evidence before the judge, including the date of the appellants' mother's death. The evidence before the judge suggested that the appellants' father remained a significant figure providing support to them in Pakistan. Mr Tufan submitted that the causal nexus between the delay in writing the decision and the judge's consideration of the evidence had not been met in order for there to be a material error of law in relation to the delay.

10. Mr Nasim, in response, submitted that the judge had overlooked relevant evidence and had made material errors in his decision.

Discussion

11. Mr Tufan relies on the case of SS (Sri Lanka), R (On the Application Of) v The Secretary of State for the Home Department [2018] EWCA Civ 1391 in submitting that the delay by Judge Cohen in writing his decision following the hearing was not such as to render the decision unsafe. He submits that that is the case owing to the continued absence of evidence before the judge to show what the appellants' circumstances were in Pakistan which was material to the question of whether the remittances made by the sponsor were required for their essential living needs. I have to agree with Mr Tufan that that was a crucial issue in the case and that the matters raised in the grounds, whilst not without arguable merit, were not ultimately material to the outcome of the appeal.

12. Judge Cohen is criticised in the grounds for not having referred to the appellants' skeleton argument or to have detailed the submissions made on their behalf at the hearing, but it is nevertheless clear that he had adequate regard to the case put to him and I cannot find anything in the skeleton argument which suggests that there were material and relevant issues that were not considered. The judge gave full consideration to the sponsor's statement and oral evidence, and he assessed the evidence before him. Although he referred at [18] to a lack of evidence of emotional support for the appellants from the sponsor, it is clear that he was fully aware of the relevant issue being financial dependence upon the sponsor. Whilst it is the case, as the grounds assert, that the judge erred at [22] by finding there to be no reference to the appellants' father or mother in the guardianship documentation when the guardianship order did in fact refer to them both, I do not consider that

anything material arises from this since he accepted that the guardianship documentation was not contested in any event.

13. Further, whilst Judge Cohen may arguably have erred by treating the grounds of appeal as evidence of the date of the appellants' mother's death when there was a death certificate confirming the relevant date, it is clear from his decision at [21] that he went on to make findings in any event, noting the inconsistent evidence of the extent of the support provide by the appellants' father and the role he retained in their lives, which he properly found was relevant to the question of dependency upon the sponsor. It seems to me that the judge was perfectly entitled to find that such an inconsistency existed in that regard, given that the appellants' case that their father had ceased supporting them in any way after re-marrying in 2016 was undermined by the fact that their school reports continued to be signed by him in 2020, and I reject Mr Nasim's submission that the judge was wrong to draw such an adverse conclusion.

14. I return, therefore, to the crucial issue of the appellants' circumstances in Pakistan. It was submitted by Mr Nasim that the judge erred by making the adverse findings that he did on the basis of a lack of evidence of the appellants' income and expenditure, considering that they were minors and therefore could not be expected to have an income of their own and that they had made it clear that their only income came from the sponsor. However the respondent was clearly concerned, in refusing the appellants' application, about the lack of evidence of their family's financial circumstances as a whole in Pakistan and that was a matter the judge was entitled to expect to be properly addressed. There was indeed no evidence about the appellants' accommodation and means of financial support after their father's second marriage and their mother's death, at a time when they claimed to have no parental support, and neither was there any evidence to show what their essential living expenses were at any time. The judge was accordingly fully entitled to draw the adverse conclusions that he did from a continued lack of such evidence to address the respondent's concerns, particularly when considered alongside the inconsistent evidence of their father's role in their lives and the lack of any documentary evidence of financial support from the sponsor up until shortly before the applications were made, as he set out at [21]. It was therefore entirely open to him to conclude that the appellants had failed to show that they were financially dependent upon on the sponsor for their essential living needs.

15. For all of these reasons it seems to me that, whilst Judge Cohen's decision can indeed be criticised in various respects as discussed, including the delay between the hearing and decision, it does not ultimately contain errors which were material to the outcome of the appeal and the delay was not such as to render the decision unsafe. On the crucial and material issues, the judge made properly reasoned findings which were open to him on the evidence before him and he was entitled to reach the decision that he did. I do not consider that the grounds identify any proper basis for setting his decision aside and I therefore uphold his decision.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 12 January 2023