



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

Appeal Number: UI-2022-003317
on appeal from EA/08988/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 20 December 2022**

**Decision and Reasons
Promulgated
On 24 February 2023**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**ABDUL JABBAR
aka
ABDUL MAQDAS
[NO ANONYMITY ORDER]**

Appellant

and

**ENTRY CLEARANCE OFFICER
ABU DHABI (LAHORE)**

Respondent

Representation:

For the appellant: Mr Azhar Chohan of Counsel, by Direct Access

For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 11 March 2021 to refuse him leave to enter the UK as an extended family member on the basis of an EEA family permit, by reference to Regulations

8 and 12 of the Immigration (European Economic Area) Regulations 2016 (as saved). The appellant is a citizen of Pakistan.

2. **Procedural issues.** The hearing today took place as a blended face to face and Microsoft Teams hearing, but I was not aware of that until after I had. I am satisfied that Mr Chohan was in a quiet and private place. Overall, I am satisfied that the hearing was completed fairly, having regard to the overriding objective.
3. The appeal today was initially treated as a 'no show' hearing as the appellant, a litigant in person, appeared not to have arranged representation. I told Ms Everett, who was present, that I would dismiss the appeal, with reasons to follow.
4. Approximately 15 minutes after rising at the end of my list for the day, I learned that Mr Chohan had been waiting online on Teams, having been instructed to represent the appellant. Efforts were made to get Ms Everett to return to the Tribunal but she could not be reached. I heard submissions from Mr Chohan, and Ms Everett was given the opportunity to make written submissions at any time up to 10 am on the following day. No submissions have been received.
5. That is the basis on which I now consider the appellant's appeal.

Background

6. The appellant is married with three children, but is not a well-educated man. Until 2015, he lived in his father's home. In late 2015, the appellant's father died and the support he received from his father ceased. The appellant, his wife and family went to live at an uncle's house, and that is when the appellant says that his family's dependency on the sponsor began.
7. The sponsor Mr Maqdas Iqbal (who describes himself in his witness statement as Mr Maqdas Ali) is said to be the appellant's cousin and has lived in the UK since 2017. He lived in Italy for 15 years before that, and became an Italian citizen. He has pre-settled EUSS status. He is married with four children, and receives both working and child tax credits.
8. The sponsor's account is that he began providing assistance to the appellant with a few payments from January 2015. In early 2017, the appellant requested more help and the sponsor, who was then in Italy, sent money. He continued doing so when he arrived in the UK in November 2017.
9. In June 2018, the sponsor visited Pakistan and helped the appellant to locate a house, which was rented in the sponsor's name and for which he acted as guarantor, and paid a deposit. He sends money, which is used to pay the utility bills. He was sending Rupees 40,000 per month, which averaged between £200 and £250, and did so, apart from a couple of months, continuously thereafter.

10. In the UK, the sponsor worked and saved. He has a house with three bedrooms, two other large rooms, and a converted loft. There is more than enough space for him, his wife, their four children aged between 4 and 12 years old, and the appellant.
11. Before the pandemic, the sponsor was working for a security company and earning about £35000. He lost his job during lockdown and when the application to the respondent was made, he was receiving benefits but had managed to retain £4000 of savings, which did not affect his benefit level.

Refusal decision

12. The appellant began applying for EEA family permit entry in 2018. His application made on 12 December 2018 was refused on 31 December 2018. A second application on 26 March 2019 was refused on 3 July 2019. His third application on 1 December 2020 was refused on 11 March 2021 and that is the decision under challenge in these proceedings.
13. The respondent accepted that the sponsor is an Italian citizen, said to be exercising EEA Treaty rights here since 2017. However, he was not satisfied as to dependency.
14. The respondent said he would expect to see 'evidence which fully details yours and your family's circumstances, such as 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'. The appellant had provided only 'a limited number of receipts for household items and one utility bill'.
15. The respondent noted that at the date of application the sponsor was earning only £798 net per month, and receiving £1210 a month in Working Tax Credit and Child Tax credits for himself, his wife and his four children. He was not satisfied that the sponsor could afford to support the appellant nor was he satisfied that the appellant was dependent as claimed.
16. The appellant exercised his right of appeal to the First-tier Tribunal. The appeal was considered on the papers, which has the disadvantage that the Judge was unable to receive any clarification from the appellant or sponsor to help him decide the appeal.

First-tier Tribunal decision

17. The First-tier Judge acknowledged that he had before him the Home Office bundle, a 92-page bundle for the appellant, and the notice and grounds of appeal. The bundle included witness statements from the appellant and sponsor, which the Judge summarised. It is clear that he did consider the documents in the appellant's 92-page bundle, which are summarised at [10] of the decision.

18. He acknowledged that a schedule of income and expenditure had been provided, along with evidence of money transfers and utility bills, and that the evidence showed regular transfers from March 2017 to December 2021, except that in November and December 2020, no money was sent.

19. The Judge summarised his assessment of the evidence at [11]-[12]:

“11. There is no evidence to show that the appellant does not pay tax in Pakistan, no evidence of school fees or similar, and no supporting evidence for his other outgoings, which is surprising given the family commitments that he must have. As it is, the evidence for the electricity bill started in 2021, and the other supporting evidence of his financial circumstances is very limited. It is not clear, even if support has been required, that dependency, on the appellant’s own account, has been continuous, the initial request was in 2015 and then renewed in 2017.

12. the fact that money was remitted is not sufficient to show that it is needed, the evidence from sponsor shows that he has been able to provide support. The claim that the appellant has been in need of financial support to meet essential needs, in the absence of a reliable and fuller picture of what his needs and circumstances actually are, has not been made out. The evidence does not show that the appellant is dependent, or that any support has been continuous.”

20. The First-tier Judge dismissed the appeal.

21. The appellant appealed to the Upper Tribunal.

Grounds of appeal

22. The unsigned grounds of appeal are prolix and repetitive. In summary, the appellant asserts that the First-tier Judge erred in fact at the level of an error of law, in that:

- (1) he misunderstood the electricity bills and that he had produced usage history from June 2018, and two bills from July and August 2019;
- (2) as regards the money transfers, given the duration of support, any gaps are not material and no frequency of payment is required by the Regulations;
- (3) the utility bills, rather than being sporadic, are annual bills;
- (4) the appellant’s children go to free government schools and no school fees are payable;
- (5) the appellant’s employment situation cannot be proved by reference to tax or social benefits records in Pakistan, and was not raised in the refusal letter;

- (6) the bulk of the appellant's financial transactions were carried out in cash;
- (7) the only requirement under the Regulations was for the appellant to show dependence to meet his essential needs; and that
- (8) the Judge has applied a European perspective not appropriate in Pakistan, and also, a threshold higher than balance of probabilities.

Permission to appeal

23. Permission to appeal was granted on the basis that:

- (1) the First-tier Judge had arguably misapplied Regulation 8 of the 2016 Regulations, and that his conclusions as to dependence were irrational, failing adequately to consider the money transfer receipts and material evidence: see grounds of appeal at [30]-[31] and
- (2) the First-tier Judge's decision was arguably procedurally unfair: see grounds of appeal at [23].

Rule 24 Reply

24. The respondent filed a Rule 24 Reply, settled by Mr Stephen Whitwell, a Senior Home Office Presenting Officer. Mr Whitwell argued that the crux of the appeal was whether the appellant had discharged the burden of proof upon him, to the standard of balance of probabilities, demonstrating his dependency on the sponsor and that it was continuous. The Entry Clearance Officer had not been satisfied as to the evidence of financial dependency.
25. The test for irrationality was very high. The First-tier Judge had not erred in finding that the evidence of the appellant's bills was intermittent, nor in finding that the appellant had not provided a semblance of an audit trail to support his asserted outgoings, including the possibility of receipts for cash transactions. The money remittance transfers had been properly considered and the grounds of appeal did not engage with the requirement for continuous dependency: see *Chowdhury v Secretary of State for the Home Department* [2021] EWCA Civ 1220.
26. The remaining grounds of appeal were to all intents and purposes a perversity challenge. The Judge had given himself a proper direction on the burden and standard of proof in *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383 and had dismissed the appeal as the evidence before him did not provide a full and reliable picture of the appellant's needs and circumstances. That conclusion was open to him on the evidence before him.
27. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

28. Ms Everett relied on the Rule 24 Reply.
29. For the appellant, Mr Chohan said that the grounds of appeal were lengthy but that was because the appellant was not represented when they were settled. The First-tier Judge had not looked properly at the 92-page bundle. Documents had been provided to support both the income and expenditure elements of the appellant's and sponsor's circumstances. He contended that the evidence produced was sufficient to demonstrate dependency as required by the Regulations.
30. The Upper Tribunal should set aside the decision of the First-tier Tribunal and remake the decision in the appellant's favour. No further hearing was required as the appeal had been considered on the papers, so the Upper Tribunal was in the same position as that of the First-tier Tribunal.
31. I reserved my decision, which I now give.

Legal Framework

32. Regulation 8(2) of the 2016 Regulations was as follows:

“(2) The condition in this paragraph is that the person is—

- (a) a relative of an EEA national; and
- (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and ...
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.”

33. Regulation 12 of the 2016 Regulations made provision for the issue of an EEA family permit to an extended family member:

“12.- (1) An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and—

- (a) the EEA national—(i) is residing in the United Kingdom in accordance with these Regulations; ...
- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
 - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);

(b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and

(c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

(5) Where an entry clearance officer receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the entry clearance officer must give reasons justifying the refusal unless this is contrary to the interests of national security.”

34. In *Lim*, Lord Justice Elias (with whom Lord Justice McCombe and Lord Justice Ryder agreed) held that:

“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.”

35. In *Chowdhury*, Lady Justice Macur, with whom Lord Justice Stuart-Smith and Sir Stephen Richards agreed, held that the dependency test requires the appellant to show that at the date of application and thereafter, he was and is dependent on the sponsor: see Regulation 8(2)(c), and that such dependency is not intermittent.

Analysis

36. This is a reasons and perversity challenge. The heart of the appellant’s argument is that the First-tier Judge misunderstood the documents produced in the 92-page bundle before the First-tier Tribunal. On a proper examination of the documents, that contention is made out, despite the correct self-direction on the *Lim* principles.

37. In 2020/2021, the sponsor’s witness statement says he earned £24000, despite losing his job mid-year. From January 2021 to January 2022, he earned £28952. This is supported by payslips and P60s. He brings home £597 a week net and has been able to resume saving. His income exceeds his monthly expenses by £1000, which gives him enough money to pay for the appellant’s house in Pakistan (£200-£250). He has provided payslips, P60s, bank and savings statements and evidence of money

transfers to support this account. He says in his statement that he would be able to support the appellant in the UK without recourse to public funds. It is not clear whether he will also have to continue helping the appellant's wife and children in Pakistan, but it appears that he has the financial resources to do that.

38. The appellant's electricity and gas bills are in the joint names of himself and the sponsor, as is the telephone bill at the property. The rental agreement dated 4 June 2018 is in the appellant's name, with the sponsor as guarantor. At page 14 of the bundle there is a statement of average monthly income and expenditure for the appellant, showing monthly outgoings of Rupees 40,000, which corresponds with the amount sent (approximately €350 in most months).
39. The sponsor's cash account at TSB has a credit balance on 29 January 2022 of £16003.22. An earlier statement shows the balance as at 29 January 2021 as £14126, so despite having a wife and four children to support, the sponsor's savings have been increasing. There are very regular payments through Ria to the appellant in Pakistan.
40. The evidence before the First-tier Tribunal was more than sufficient to show dependency. Indeed, joint responsibility for utilities, the payment of a deposit on the appellant's rented home, and guaranteeing his tenancy, as well as the regularity of the payments, are enough to amount to a dependency on his cousin for his essential needs. It does not have to be a dependency of necessity.
41. The Upper Tribunal interferes only with caution in the findings of fact by a First-tier Judge who has heard and seen the parties give their evidence and made proper, intelligible and adequate findings of fact. That is not the position here, however: there were no witnesses as it was a paper hearing, and the Judge's findings are irrational at the level of a material error of law.
42. The appellant's appeal therefore succeeds and I substitute a decision allowing his appeal.

DECISION

43. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Signed [Judith AJC Gleeson](#)
December 2022
Upper Tribunal Judge Gleeson

Date: 21