



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

Appeal Number: EA/52935/2021,
UI-2022-002575

THE IMMIGRATION ACTS

Heard at Manchester on 13 June 2023 **Decision and
Promulgated
On 23 June 2023** **Reasons**

**Before
Upper Tribunal Judge Bruce
Deputy Upper Tribunal Judge Sills**

**Between
MR ABDUL SATTAR
(Anonymity Direction Not Made)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

Representation:

For the Appellant: Mr Khan
For the Respondent: Mr Bates

Introduction

1. The Appellant appeals against the decision (the Decision) of First-Tier Tribunal Judge Gould (the Judge) dated 24 March 2022, dismissing his appeal against the refusal to grant him an EEA family Permit under the Immigration (European Economic Area) Regulations 2016 (the 2016 Regs).

Factual Background

2. The Appellant is a citizen of Pakistan, born on 27 April 1994. He applied for an EEA Family Permit on 26 October 2020 on the basis of his relationship with and dependency upon his brother and Sponsor, Ehsan Ul Haq Muhammad. The Respondent refused the application in a decision dated 6 April 2021. The Respondent did not accept that the

Appellant was dependent upon his Sponsor as claimed and so found that the Appellant did not satisfy the extended family member requirements under Reg 8 of the 2016 Regs.

3. The appeal came before the Judge on 15 March 2022. The only issue in the appeal was whether the Appellant was dependent upon the Sponsor as claimed. The Judge was not satisfied that the Appellant was dependent upon the Sponsor and so dismissed the appeal.
4. The Appellant applied for permission to appeal. The grounds argue that:
 - a. The Judge misdirected himself concerning the case of Lim v ECO Manila [2015] EWCA Civ 1383;
 - b. The Judge erred in finding that dependency was not genuine as no money had been spent on improving employment prospects in conflict with the case of Lim.
 - c. The Judge had erred in not finding that the Appellant had provided sufficient evidence to establish dependency.
 - d. The Judge had erred in stating that the Sponsor could not afford to financially support the Appellant.
5. Permission to appeal was granted by First-Tier Tribunal Judge Robinson on 25 May 2022 in the following terms:

2. The grounds assert that the Judge has failed to consider the evidence regarding dependency and misdirected himself in applying the correct law; in particular, that there is no requirement for the Appellant to show that he has attempted to look for work, with regard to Siew Lian Lim v ECO Manila [2015] EWCA Civ 1383.

3. It is arguable that the Judge has misdirected himself in his findings on dependency with regard to Case C-316/85 Centre Publique d'Aide Social de Courcelles v Lebon and Case C-1/05 Jia v Migrationsverket and arguably the reasoning is overall inadequate.

The Hearing

6. Mr Bates confirmed that the Respondent opposed the appeal. We heard submissions from the two representatives. We reserved our decision.

Relevant Law

7. Reg 8 of the 2016 Regs states:

8.—(1) *In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).*

(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 either—

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(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.

8. The case of Lim held:

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.

Findings

9. Mr Khan adopted a slightly different structure to the grounds, challenging particular paragraphs of the Judge’s decision. We will determine the issues following the structure adopted at the hearing.
10. Mr Khan argued that the Judge at [10] of the Decision erred in relation to the Lim case in considering the question of why the Appellant had not been able to find employment. We are satisfied that [10] does not contain any error of law. The Appellant’s case, as set out in his witness statement at [5], was that he required the financial support of the Sponsor and that due to a lack of education and experience, and the high unemployment rate, he had not been able to find work and so was dependent upon the Sponsor. At [10], the Judge was assessing the credibility of the Appellant’s claim to be dependent upon the Sponsor and was entitled to do so.

11. In relation to [11] of the Decision, Mr Khan argued that the Judge had again erred in relation to the case of Lim in finding it curious that none of the funds had been spent on training or education, and that this was because the Appellant wished to create the illusion of dependency. We are satisfied that [11] does not contain any error of law. Given that the Appellant's case was that he had not been able to find work due to a lack of education, the Judge was entitled to query why the Appellant had not spent any of the money sent to him on education or training. In doing so the Judge did not breach the principles set out in the case of Lim. As in the preceding paragraph of the Decision, the Judge was considering the credibility of the Appellant's claim to be dependent upon the Sponsor, and was entitled to do so.
12. Mr Khan argued that the Judge's finding at [12] of the Decision, that the evidence of receipts did not establish dependency, was irrational. We do not accept this. The Judge acknowledged that evidence of funds transferred to Pakistan and evidence of money spent in Pakistan. The Judge was entitled to find that this evidence did not establish dependency and did not act irrationally in doing so. The fact that money was sent to the Appellant in Pakistan, and that the Appellant spent money in Pakistan, does not establish that the Appellant required the money sent to meet his essential needs.
13. As to [13] of the Decision, Mr Khan argued that in noting the absence of any documentary evidence to show the support the Sponsor had provided to the Appellant while the Sponsor was in Spain, the Judge had taken irrelevant matters into account. We do not accept this. The Judge was entitled to note both the claim that the Appellant's dependency upon the Sponsor predated the Sponsor's residency in the UK, and the absence of any evidence to support this claim. These matters were not irrelevant to the question of whether the Appellant has been dependent upon the Sponsor while the Sponsor has been in the UK as claimed, and the Judge was entitled to take them into account.
14. Mr Khan argued that at [14] the Judge gave inadequate reasons for finding that the Sponsor lacked the means to support the Appellant, that it was unfair to suggest he had inflated his household income, and that the Judge's analysis of the Sponsor's financial situation was irrational. We do not accept this. The Judge was entitled to examine the Sponsor's finances in order to assess the credibility of the Appellant's claim of dependency. In considering the credibility of the Appellant's claim, the Judge was entitled to note that the Sponsor had more than one modestly paying job, was in receipt of state benefits, had a wife and two children in education, and that a significant proportion of the household income was transferred to Pakistan. The Judge was further entitled to note that the Sponsor was also relying on his son's income. This aspect of the Decision was not inadequately reasoned or irrational.
15. The Decision does not contain an error of law.

Notice of Decision

16. The appeal is dismissed.

Signed

Date 13 June 2023

A handwritten signature in black ink, appearing to be 'Sills', written in a cursive style.

Deputy Upper Tribunal Judge Sills