



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-003853**  
**UI-2022-003854**  
**UI-2022-003855**  
**UI-2022-003856**  
**First-tier Tribunal No:**  
**EA/06615/2021**  
**EA/06619/2021**  
**EA/06624/2021**  
**EA/06632/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 22 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Muhammad Tayyab and Others**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr O Sobowale, Counsel instructed by Axiom DWFM Solicitors

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 17 August 2023**

**DECISION AND REASONS**

1. The appellant's are nationals of Pakistan. The first appellant is married to the second appellant, Mrs Farah Zia. They are the parents of the third, fourth and fifth appellants. They each made an application for an EEA

Family Permit as extended family members of the first appellant's brother, under the Immigration (European Economic Area) Regulations 2016. The applications were refused by the respondent for reasons set out in decisions dated 23<sup>rd</sup> and 24<sup>th</sup> March 2021. The respondent was not satisfied that on the basis of the evidence provided in support of the applications, the appellants are dependent upon the sponsor as claimed.

2. The appellants' appeals against those decisions were dismissed by First-tier Tribunal Judge Young-Harry for reasons set out in a decision promulgated on 2 February 2022. The only issue in the appeal was whether the appellants are dependent on the sponsor as claimed. Judge Young-Harry was not satisfied the appellants are dependent on the first appellant's brother.
3. The appellants claim Judge Young Harry has not taken into account all of the evidence that was provided setting out the income and expenditure of the appellants together with the consistent long-term support provided by the sponsor. The appellants claim the respondent had failed to review the appellants' evidence prior to the hearing and at the hearing raised questions about the documents provided, some of which the sponsor was unable to address without producing further paperwork. The appellants claim the judge found there to be inconsistencies in the evidence without the appellants' or sponsor having any opportunity to address matters.
4. The appellants claim the evidence of the sponsor was that he had been supporting his mother from the UK since January 2020, but he previously supported his family from Belgium following the death of his father in February 2009. The appellants claim there is no inconsistency between the sponsor's evidence and what is set out in the letter of the second appellant, who confirmed that the sponsor had supported his family since the death of his father in February 2009. The appellants also claim Judge Young-Harry placed undue weight on the failure of the second appellant to mention the first appellant's previous employment. The letter from the second appellant was simply a short covering letter provided as a backdrop to the application. The appellant's claim the evidence before the Tribunal, taken together, established the sponsor has sent money to his mother from the UK since January 2020 and this money was used to assist the appellant's with their essential living costs. Finally, the appellants claim the judge erred in law by concluding that there has been no long-term support from the sponsor and that the support began only three months before the submission of the application. It is said the judge failed to note that at the date of hearing, there were no less than 15 months of money transfers, accompanied by an income and expense summary, receipts and bills to demonstrate the appellants essential living costs are met by the sponsor.
5. Permission to appeal was granted by Upper Tribunal Judge Kamara on 18 October 2022.
6. Before me, Mr Sobowale adopted the grounds of appeal. He referred to the respondent's decisions. He drew my attention to the decisions in respect of the second, third appellants that are in the appellant's bundle.

The respondent identified in the bullet points the matters that were of concern leading to the respondent's overall conclusion that she is not satisfied that the appellants meet the requirements of the Immigration (European Economic Area) regulations 2016 ("the EEA Regulations 2016"). Mr Sobowale submits that at the hearing of the appeal, the appellants sought to address the matters specifically raised by the respondent. However, in reaching her decision, Judge Young-Harry states there were inconsistencies in the evidence. The judge refers, at paragraphs [10] and [11] to an inconsistency between the evidence of the sponsor that he arrived in the UK in September 2019 and began sending money to the appellants, via his mother in January 2020, and what was said in the covering letter to the application made by the second appellant. Mr Sobowale submits that the information provided by the second appellant in that letter was nothing more than background information and she could not have known whether her brother-in-law had been providing support since 2009 because she did not marry the first appellant until February 2011 (*marriage certificate in the appellant's bundle*).

7. Mr Sobowale submits the judge, at [12], accepted money was sent to the first appellant's mother, but rejected the claim that the money was for the benefit of the appellants'. No inconsistency in the evidence is identified. Mr Sobowale also refers to the reference at paragraph [13] of the decision to a 'glaring absence' of the first appellant's bank statements. He submits there is no requirement for bank statements to be produced and there was no reason, prior to the hearing of the appeal, for the appellants and their representatives to believe that the lack of bank statements would undermine the claims made. Mr Sobowale submits that at paragraph [19], the judge refers to the remittance receipts evidencing money sent by the sponsor to the first appellant between August 2020 and October 2021. The evidence shows the sums fluctuate and it was reasonable for the sponsor to claim that he sends about £250 to the appellants each month and for the appellant's to claim they receive £300 per month. A rough calculation of the sums sent disclosed that on average, the sponsor sends somewhere between the two figures.
8. Mr Sobowale drew my attention to the spreadsheet that was in the appellant's bundle setting out the fifteen remittances between August 2020 and October 2021 and the relevant outgoings in respect of utilities such as, Gas, Electricity, Telecoms, medicine, rent, clothes and groceries. The receipts to support the expenditure were in the appellant's bundle. Mr Sobowale accepts the electricity bills are addressed to 'Mr Syed Abdullah' and there was no explanation before the First-tier Tribunal as to who he is. He also accepts the invoices from 'Pakistan Telecommunication Company Ltd' are addressed to Mr 'Mukhtar Ahmad', who Judge Young-Harry noted, at [18] is the landlord as set out in the tenancy agreement. Mr Sobowale submits that in reaching her decision the judge failed to have regard to the terms of the 'rent Agreement' dated 1 January 2020 which states that "*All utility bills (Electricity & Telephone etc) shall be paid by the tenant on time*". Mr Sobowale submits the sponsor was not asked about these anomalies in the evidence and was not given an opportunity to address the concerns held by the judge. Mr Sobowale submits Judge Young-Harry

concluded, at [21], that the appellants have failed to provide sufficient evidence about their personal circumstances, but she failed to properly engage with the evidence that was before the First-tier Tribunal.

9. In reply, Ms Arif submits the decision of the First-tier Tribunal is well reasoned, and based upon the evidence before the Tribunal. At paragraph [5] the judge confirms she has carefully read and considered all the documents provided, even if specific items are not referred to in the findings that followed. At paragraph [4] she had already noted the respondent had provided a bundle that contains the application forms, passport photocopies, remittance receipts, the rental agreement, school receipts, and utility bills. At paragraphs [8] and [9] of her decision the judge refers to the relevant legal framework that applies and directs herself properly that the appellants must establish they rely on the material support of the EEA national, to meet their essential needs. She noted she must conduct a close examination of the appellants' personal circumstances and she did so in her findings and conclusions.
10. Ms Arif submits that on the evidence that was before the First-tier Tribunal it was open to Judge Young-Harry to conclude that there are inconsistencies in the evidence, based upon the written evidence relied upon by the appellants and the oral evidence of the sponsor. She accepts that although there is no requirement for the appellants to provide bank statements, the Judge was entitled to have regard to the absence of bank statements in circumstances where the appellants had provided a number of other supporting documents and where the respondent had noted in her decision that the first appellant had been receiving an income from employment and paying income tax.
11. Ms Arif submits it was for the appellant's to establish that their essential living needs are met by funds provided by the sponsor and it was open to the Judge to note the receipts for electricity are addressed to 'Syed Abdullah', and the invoices from 'Pakistan Telecommunication Company Ltd' are addressed to Mr 'Mukhtar Ahmad'. Mr Arif submits that as Judge Young-Harry said at paragraph [21], there were the gaps in the evidence, coupled with the inconsistencies surrounding their home address, living arrangements and when they started to rely on the sponsor's financial support. It was open to the Judge to have doubts about the claims made by the appellants and to conclude, as she did at [23] that the appellants have failed to show, in line with *Lim* [2015] EWCA Civ 1383, that they depend on the material support of the sponsor to meet their essential needs.

### **Decision**

12. In her decision dated 23 March 2021 refusing the application made by the first appellant, the respondent referred to the first appellant's claim to be financially dependent on his brother. The respondent noted the first appellant had provided money transfer remittance receipts from his brother, but the transfers were dated immediately prior to his application (within the last 4 months). The respondent was not satisfied that the limited amount of evidence in isolation establishes the appellants are

financially dependent on the sponsor. The respondent said she would expect to see substantial evidence over a prolonged period, with evidence of the family circumstances including income and expenditure that establishes that without the financial support of the sponsor the essential living needs could not be met. The decisions made in respect of the second, third and fourth appellants were in different terms but in each case the respondent confirmed that on the evidence relied upon, she was not satisfied the appellants are dependent on the sponsor as claimed. Judge Young-Harry summarised the respondent's case at paragraph [2] of her decision. The sponsor attended the hearing of the appeal and gave evidence.

13. At paragraphs [10] to [20] of the decision, Judge Young-Harry sets out a number of inconsistencies in the evidence before the Tribunal and the concerns she had about the claims made. I reject the claim made by the appellants that the decision of the Judge is tainted by procedural unfairness because questions were raised by the respondent about the documents provided, some of which the sponsor was unable to address without producing further paperwork, or did not have any opportunity to address. It was obvious from the respondent's decisions, that the sole issue on appeal is whether the appellants are financially dependent on the sponsor to meet their essential living needs. The burden of proof is on the appellants.
14. At paragraph [10] of her decision, Judge Young-Harry refers to the evidence of the sponsor that he arrived in the UK in September 2019 and began sending money to the appellants, via his mother in January 2020; he started sending money directly to the appellants in August 2020. At paragraph [11] of her decision, the Judge records; "*...The sponsor however in his witness statement and during the hearing confirmed, that he has only been financially supporting the appellants directly since August 2020, and through his mother since January 2020...*". Contrary to what is claimed in the grounds of appeal, the evidence of the sponsor was not that he had been supporting his mother from the UK since January 2020, and previously supported his family from Belgium following the death of his father in February 2009. The appellants have not provided a witness statement from the legal representative that appeared before the First-tier Tribunal, exhibiting the contemporaneous notes of the evidence to indicate the evidence before the Tribunal was as the appellants claim, and that the evidence is incorrectly recorded by the judge at paragraphs [10] and [11] of her decision.
15. The only evidence that there was of the sponsor having supported the family since the death of his father in 2009 comes from the letter provided by the second appellant in support of her application. The second appellant said; "*...My husband Mr Muhammad Tayyab is seeking financial assistance from his brother, Mr Ali Raza for myself and our 2 daughters, as his father died in 2009. After the death of my father-in-law, my brother-in-law (Mr Ali Raza) is providing us bread and butter for our living...*". That was an assertion made by the second appellant in support of the claimed dependency. In refusing the second appellant's application, the

respondent expressly stated in her decision dated 24 March 2023; "...On your application you state that you have been financially dependent upon your sponsor since 2009. As evidence of this you have provided 7 money transfer remittance receipts from your sponsor to your husband, however, it is noted that these transfers are dated from August 2020...". The issue had been identified in the respondent's decision and it was in my judgement open to Judge Young-Harry to conclude that the evidence of the sponsor, was inconsistent with the claim made in that letter.

16. At paragraph [11], Judge Young-Harry found the picture portrayed in the letter from the second appellant was not a genuine one. That was plainly open to the judge in circumstances where the second appellant's claim regarding the length of time the family has been dependent upon the sponsor is at odds with the evidence of the sponsor and where, as the judge noted, the second appellant made no reference whatsoever to the first appellant's previous employment. The respondent had identified in the decision refusing the second appellant's application that checks with the Government of Pakistan had revealed that her husband is in receipt of a salary and is paying income tax. The respondent did not accept the first appellant is unemployed as stated in the application.
17. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs.
18. More recently, in Latayan v SSHD [2020] EWCA Civ 191, Jackson LJ said:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket Case C-1/05*; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket Case C-423/12*; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC) , dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426 ):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of

all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

19. Whether the appellants' are dependent on the sponsor is therefore a factual question for the judge to assess on the evidence before the Tribunal. As I have said, the burden rested upon the appellants. The appellants claim the evidence before the Tribunal, taken together, established the sponsor has sent money to his mother from the UK since January 2020 and this money was used to assist the appellant's with their essential living costs. It is clear from what is said at paragraphs [12] to [ 20] of her decision that Judge Young-Harry carefully considered the evidence that was before the Tribunal. She was entitled to note that some of the remittance receipts show money sent to the appellants without any cogent evidence that the money was for the benefit of the appellants'. The Judge rejected explanations given by the sponsor for anomalies in the evidence, including the amounts sent to the appellants and she noted that some of the utility bills were addressed to others, without explanation.
20. At paragraph [20], the judge referred to the evidence that the sponsor started sending money directly to the appellants in August 2020 (*see paragraph [10] of the decision*). She had noted, at [12], the remittance receipts demonstrating money sent to the sponsors' mother, but rejected the claim it was for the benefit of the appellant's. The spreadsheet provided, with receipts, did not advance the appellant's case any further. The judge clearly considered that evidence and highlighted the concerns that she had about the individuals to whom at least two of the utility bills are addressed. The general grocery receipts relied upon are not, as one would expect, addressed to anyone in particular. At paragraph [21] of her decision, Judge Young-Harry found the appellants have not shown they were receiving any money from the sponsor before August, three months before the applications were made. On the other findings made, that was clearly a finding open to her on the evidence. Although I accept there is no requirements to provide bank statements to support such an application, the absence of bank statements was a factor Judge Young-Harry was entitled to have regard to in circumstances where the respondent had highlighted in her decision that checks with the Government of Pakistan had revealed that the first appellant was is in receipt of a salary and was paying income tax and did not accept that he is unemployed as was being claimed.
21. It is clear from the authorities that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. Families often send money to each other, even regularly, across international borders and that can be for a whole range of reasons. Here, there is a requirement of dependency to meet essential living needs, not

just evidence of regular money transfers or evidence of money transfers over a prolonged period.

22. Reading the decision as a whole, it is clear Judge Young-Harry was satisfied that there have been some transfers of funds directly to the appellants since August 2020, but was not satisfied that the appellants have established that on balance, the funds are necessary to enable the appellants to meet their basic needs.
23. A judge is not required to give reasons for their reasons. Here, there was a very broad and vague claim set out by the appellants in spreadsheet relied upon, but the evidence of the sponsor in material respects was rejected. Reading the decision as a whole it is clear the judge had in mind the correct test and the evidence relied upon by the appellants. The fact sensitive analysis required was carried out by the judge.
24. I have reminded myself of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy of reasons means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. Although "error of law" is widely defined, the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. The decision is to be read looking at the substance of the reasoning and not with a fine-tooth comb in an effort to identify errors. Reading the decision as a whole, it cannot be said that the Judge's analysis of the evidence that was before the Tribunal is irrational or perverse. I am satisfied that Judge Young-Harry's decision is a sufficiently reasoned decision that was open to her on the evidence.
25. In my judgment, the grounds of appeal do not disclose a material error of law capable of affecting the outcome of the appeal.
26. It follows that I dismiss the appeal.

**Notice of Decision**

27. The appeal is dismissed

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**17 August 2023**



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