



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004466
(EA/06116/2020)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 July 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Noman Iqbal

Appellant

and

Entry Clearance Officer, Islamabad

Respondent

Representation:

For the Appellant: no attendance

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 19 July 2023

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on the 26th December 1984. He appeals with permission against the decision of the First-tier Tribunal (Judge Meyler) to dismiss his appeal brought under the Immigration (European Economic Area) Regulations 2016 ('the Regs').
2. The basis of the Appellant's application for a family permit entitling him to enter and reside in the United Kingdom was that he is an 'extended family member' of his brother, a Norwegian national who is exercising treaty rights here. The Entry Clearance Officer ('ECO') refused the application on two grounds. It was not accepted that the Appellant and Sponsor were related as claimed; nor was it accepted that the Appellant is dependent upon his brother, as required by Regulation 8 of the Regs.

3. The Appellant exercised his right of appeal and elected for the matter to be dealt with on the papers. It came before Judge Meyler on the 27th July 2021. She did not address the question of the relationship, perhaps because, as she rightly notes, no reason had been advanced for doubting it in the first place. The Judge instead goes straight to what she identifies as the key issue in the appeal: is the Appellant dependent upon his brother to meet his essential living needs in Pakistan. She properly directs herself that 'dependency' for the purpose of Reg 8 may be out of choice, and to that extent disapproves the terms in which the ECO had expressed it in the decision. She then says this:

"it is still necessary to establish that the Appellant requires the financial support sent to him for his essential living needs. Whilst I have noted the witness statements and Union Council letter, claiming that the Appellant does not work and has no bank account, there was no satisfactory explanation before me as to why the Appellant should not have a bank account. I also found that there was a failure to explain in sufficient detail what the Appellant's domestic circumstances and status were".

4. She concludes by observing that oral evidence from the Sponsor may have been able to bridge that evidential gap, but on the evidence before her she could not be satisfied that there had been a full and frank disclosure of the Appellant's employment and domestic circumstances. Specifically, she could not be satisfied that he was not in fact working. The appeal was accordingly dismissed.
5. The grounds of appeal are that Judge Meyler failed to have regard to material evidence, and misdirected herself in law. The Appellant asked that this appeal be decided on the papers. On the 6th July 2023 the Sponsor was informed by lawyers at Field House that it was open to him to attend the hearing if he wished to do so. On the morning of the hearing there was no appearance so I put the matter to the end of my list. By 11.00 am there was no appearance and in view of the Appellant's repeated requests for the appeal to be decided on the papers, I determined that it was in the interests of justice for the matter to proceed, having regard to the overriding objective.
6. I deal first with the question of law. The grounds refer to authorities such as Lim (EEA-dependency) [2013] UKUT 00437 (IAC) to submit that dependency under Reg 8 can be out of choice. That is of course correct as a matter of law. What the grounds fail to do is establish that Judge Meyler's understanding was otherwise. Indeed they cannot, since she expressly directs herself to the correct principle in the opening sentence of her paragraph 14. I can find no legal defect in the approach that the Judge took to the regulation.
7. The substance of this appeal is against the finding of fact that the Appellant has not discharged the burden of proof in demonstrating that he is dependent upon his brother for his essential living needs. It is submitted that in reaching her finding the Judge overlooked material evidence and acted irrationally. I am not satisfied that this is so. There is no reason to think that the Appellant's bundle of documents was overlooked; indeed it is expressly referred to in the decision. The point made by the judge is that these documents paint a certain image, but it was not clear to her that they amount to the whole picture. The Appellant may well, for instance, be using money his brother sends him for groceries, but that does not tell her what other income he has and what he uses that for. The

evidence fell short of establishing that this money was used for essential living needs, and that being the test, the appeal was rightly dismissed.

Notice of Decision

8. The appeal is dismissed.
9. There is no order for anonymity.

Upper Tribunal Judge Bruce
19th July 2023