



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02616/2020 (V)

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre  
On 8<sup>th</sup> November 2021

Decision & Reasons Promulgated  
On 19<sup>th</sup> November 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

INAMULLAH ZAZAY

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms B Hashmi, instructed by Mamoon Solicitors  
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
2. The appellant is an Afghan national born on 5 August 2002. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EEA family permit to enter the UK as

an extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2016.

3. The appellant applied for an EEA family permit on 21 January 2020 to join his paternal uncle Ezatullah Zazay, a Belgian national, whom it was claimed had lived in the UK since 2019 and upon whom he claimed to be financially dependent.

4. The respondent refused the appellant's application on 6 March 2020 as it was not accepted that he was an extended family member in accordance with regulation 8(2) of the EEA Regulations. On the evidence submitted, the respondent considered that the appellant had not demonstrated that his essential living needs could not be met without the financial support of the sponsor and was not satisfied that he was financially dependent upon his sponsor. The respondent noted the sponsor's statement that the appellant was living in his house in Pakistan with his (the sponsor's) father, but did not accept that that was sufficient evidence to show that the house in which the appellant lived was owned by the sponsor. The respondent accordingly did not accept that the appellant was a family member of the sponsor.

5. The appellant appealed against that decision. In an ECM Review on 12 June 2020, an Entry Clearance Manager maintained the ECO's decision.

6. The appellant's appeal was listed for hearing and the appellant produced a bundle of documents for the hearing which included, inter alia, the sponsor's pre-settled status document dated 5 March 2020, the sponsor's bank statements, money transfer receipts and land registry documents from Pakistan.

7. The appeal came before First-tier Tribunal Judge Herwald on 25 February 2021. The respondent was not represented, but Ms Hashmi appeared for the appellant. The sponsor gave oral evidence before the judge, stating that he was self-employed in the UK and supported the appellant financially, and that the appellant was living in his house in Pakistan and would live with him in the UK. The sponsor was asked about his business accounts which his statement referred to as having been produced but which the judge could not find in the papers before him. This led to the sponsor being asked questions about his business. The judge concluded that there was in fact no business which produced an income and that the sponsor had simply received a loan of £50,000 from the UK government following a claim he had made in respect of furloughed staff. The judge was not persuaded that the sponsor was telling the truth and did not accept that he was a genuinely qualified person. He dismissed the appeal.

8. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had misdirected himself in determining the appeal and had failed to resolve the only issue before him, namely the appellant's dependency upon the sponsor, but had rather dismissed the appeal on the basis of a matter which had not been part of the respondent's reasons for refusal. It was asserted that the judge ought to have adjourned the proceedings to give the sponsor a fair opportunity to provide relevant documentary evidence if he had real concerns about the sponsor being a qualified person.

9. Permission to appeal was granted in the First-tier Tribunal on 24 August 2021. The respondent filed a rule 24 response resisting the appeal.

10. The matter was then listed for hearing and came before me.

11. Ms Hashmi relied upon her grounds of appeal and submitted that the judge had failed to deal with the only issue before him, namely whether the appellant was dependent upon the sponsor. That was the only basis upon which the respondent had refused the application. The judge was concerned with the evidence produced for the sponsor, but the sponsor had only provided the evidence he considered necessary to show that he had adequate funds to support the appellant and was not reliant upon public funds. If the judge had had concerns about the sponsor's work he should have adjourned the proceedings. The fact that the respondent had issued the sponsor with pre-settled status showed that she was satisfied that he had been working and exercising treaty rights.

12. Ms Aboni relied upon the respondent's Rule 24 response and submitted that the judge made it clear that he had concerns about the sponsor's business and income and found him to be an unreliable witness. The sponsor was given ample opportunity to address the new issues and his answers were inconsistent and contradictory. The appellant had not requested an adjournment. It was open to the judge to conclude that the sponsor was not exercising treaty rights and it was therefore not even necessary for him to go on and consider the issue of dependency. It would have been perverse for the judge to find there to be dependency when he was not satisfied about the sponsor's business and finances.

13. Ms Hashmi, in response, submitted that the judge ought to have adjourned the proceedings if there were new circumstances being raised. There had not been an opportunity for the sponsor to produce new evidence. Ms Hashmi said that she had requested an adjournment as there were documents in existence to prove the business, but the judge had refused.

## **Discussion**

14. It is the appellant's case that procedural unfairness arose from Judge Herwald dismissing his appeal on a ground not raised in the respondent's refusal decision, namely his sponsor's status as a qualified person, and failing to deal with the one relevant issue, namely his financial dependency upon the sponsor. However, as the rule 24 response properly points out at [8], the two matters are inextricably linked and the question of dependency cannot be separated from concerns about the sponsor's status and financial circumstances and concerns about the source of the funds purporting to have been sent by the sponsor to the appellant for his support. Undoubtedly the judge's decision could have been better expressed and would have been assisted by an express finding on the question of dependency rather than the decision being expressed in terms of the sponsor's status. However it is clear from the judge's findings that he did not accept that there was reliable evidence of the source of the claimed dependency and that his decision was not simply limited to a finding that the sponsor was not a qualified person.

15. At [14] of his decision, Judge Herwald made it clear that he did not consider that he had been presented with a reliable account of the sponsor's financial circumstances and the money being provided by the sponsor. It is asserted by Ms Hashmi that the proceedings ought to have been adjourned in order for the documentary evidence of the sponsor's business to be produced. She confirmed that such evidence was in existence but had not previously been produced because there had been no question about the sponsor's status as a qualified person. However the detailed record of proceedings does not show that an adjournment request was made or that there was any suggestion of the availability of further documents of the business. On the contrary, the judge's record of the evidence at [14(c)] and [14(d)] shows that the sponsor confirmed that all the relevant evidence was in the bundle and indeed Ms Hashmi confirmed that to be the case, until it was pointed out to them that there was no such evidence in either of the two bundles produced. Further, the record at [14(e)] confirms that the sponsor said that he had no such documents. Neither the appellant's grounds, nor the submissions of Ms Hashmi gave any indication of the nature of any further evidence of the business which was in existence. In so far as the judge had before him bank statements from the sponsor, the statements for his personal account were confirmed by the sponsor not to relate to income from business, as the judge recorded at [14(i)]. In regard to the business account statement at page 33 of the bundle, that only showed the funds from the UK government's loan of £50,000 as referred to at [14(j)], the sponsor having confirmed that there was no income from the business. Accordingly I see no reason to suggest that there was any procedural unfairness in the judge's approach to the evidence.

16. It is also clear from the judge's decision, particularly at [14(l)], [14(m)], [14(n)] and [14(r)] to [14(t)], that he did not find that the sponsor had provided a reliable account of his outgoings and the people to whom he claimed to be sending money. At [14(t)] he noted the sponsor's inconsistent evidence about the number of people who were supposed to benefit from the money he sent to his father, as evidenced in the money transfer receipts, one of whom was claimed to be the appellant, and at [14(w)] he repeated those concerns as well as the general concerns about the sources of the sponsor's funds and the numbers and identities of the recipients of those funds. Such findings were clearly relevant to the question of financial support for the appellant and the question of dependency.

17. It is argued on behalf of the appellant that the judge had erred by questioning the sponsor's status as a qualified person when he had before him the confirmation of his grant of pre-settled status, at page 17 of the appeal bundle. However I agree with Ms Aboni that that evidence went no further than showing that the sponsor had produced evidence of exercising treaty rights at that time, a year prior to the hearing before the judge. The judge was not thereby bound to accept that the sponsor was providing reliable evidence of his status at the time of the hearing and neither was he bound to accept the sponsor's account of his financial circumstances and the financial support he was providing to third parties, in particular considering the extent of the concerns referred to above. I therefore reject the assertion that the judge erred in law by making the finding that he did on the sponsor's status and consider that, whilst he did not make a specific

finding rejecting the account of the appellant's dependence upon the sponsor, there can be no doubt from the findings that he did make, that he did not accept the claim presented in that regard.

18. Accordingly, whilst it is fair to say that the judge's decision could have been better expressed, I do not consider that the criticisms made in the grounds of appeal identify any material errors of law in his conclusions on the appellant's status under the EEA Regulations requiring the decision to be set aside. The judge was entitled to reject the evidence about the sponsor and his support for the appellant and he was entitled to conclude that the requirements of Regulation 8 were not met.

## **DECISION**

19. 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 appeal stands.

Signed: *S Kebede*  
Upper Tribunal Judge Kebede

Dated: 9 November 2021