



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

Case No: **UI-2022-003518**  
**UI-2022-003519**  
**UI-2022-003520**  
**UI-2022-003521**  
**UI-2022-003522**  
First-tier Tribunal No:  
**EA/04574/2021**  
**EA/04588/2021**  
**EA/04579/2021**  
**EA/04585/2021**  
**EA/04569/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MUHAMMAD MUSHTAQ**  
**ZAHIDA PARVEEN**  
**AZHAN MUSHTAQ**  
**ANJLA MUSHTAQ**  
**ADAM MUSHTAQ**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**AN ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant:

Mr Azmi, instructed by Axis Solicitors Limited.

For the Respondent:

Mr Williams, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 21 March 2023**

**DECISION AND REASONS**

1. The Appellant's appeal with permission a decision of First-tier Tribunal Judge Juss ('the Judge'), promulgated on 21<sup>st</sup> June 2022, in which the Judge dismissed the appeals of this family unit, citizens of Pakistan, against the refusal of their applications for residence cards as confirmation of their right to reside in the

United Kingdom as extended family members of an EEA national exercising treaty rights in the United Kingdom.

2. The Judge set out his findings from [16] of the decision under challenge. The Judge finds in the appellant's favour in relation to their relationship to the EEA national but from [18] provides his reasons why the Appellants had not shown that they needed the financial support from the EEA national sponsor to meet their essential needs.
3. The appellant sought permission to appeal relying on the following grounds (which I set out in full for the benefit of any reader of this decision):

### **Making a material misdirection of law in any material matter**

- 1) It appears the FTT Judge considered the third to the fifth Appellants to be over 21 - see paragraph 21 of the decision, however at the time of the hearing on 12 April 2022, the third Appellant was 17 (DOB 2.9.2004), the fourth Appellant was 16 (DOB 21.03.2006), the fifth Appellant was 12 (DOB 7.3.2011) - see paragraph 6 of the decision). Therefore, it is unclear as to the legal basis on which their claims were considered.
- 2) This is particularly the case, as the FTT Judge refers to the *Immigration (European and Economic Area) Regulations 2006* at the commencement of his reasoning at paragraph 16, rather than the 2016 *Regulations* under which the case was decided upon (see the refusal of entry clearance officer). Indeed, the citation of the law in the Regulations at paragraph 2 under "Legal Provisions" comes from the *2006 Regulations* rather than the operative *2016 Regulations*. The same legal error applies to paragraph 3 of the decision as to the contents of *Regulation 8*. It is therefore unclear which proper legal provisions applicable were considered what were relevant in the FTT Judge's mind when he decided the appeals.
- 3) In the consideration of the law in paragraphs 23 - 24 in relation to contrived dependency, there is no consideration of the fact it is relevant why a party is dependent, merely that they require support to meet their basic needs (see **Lim v Entry Clearance Officer, Manila [2015] EWCA Civ 1383 [29-31]**). In the analysis made by the FTT Judge there is in any event, and relevant to the legal findings, an inadequate basis of consideration of the evidence as set out below.

### **Failing to give reasons or any adequate reasons for findings on material matters**

- 4) The First Tier Tribunal ("FTT") Judge whilst making findings as to the Appellant's dependency on their Sponsor, or lack of dependency upon him, permitted to consider considerable evidence in that:
  - In paragraph 19 of his decision it does not accept that the Appellants do not have any longer ownership of their property, however there is no consideration of the document from the Office of the Union Council stating the Appellants live in the home of the sponsor, Mr Zafar Khan Mohammad Begum (page 43 of the Respondent's bundle for Adam Mushtaq). Given this is an official document some consideration was necessary in dealing with the ownership of the property.

- In paragraph 20 the FTT Judge comments “*in fact, the sponsor what (?) school fees he was meant to be providing for and I do not accept the reason he did not ask was because he did not want to shame his sister*”. However, there is no reference to the Sponsor’s witness statement (page 9 of the Appellant’s bundle) at paragraphs 34, 36 where he clearly states that he is responsible for the education fees of the fifth Appellant, Adam Mushtaq. Moreover, the fee payments card for the child was provided (pp 37 – 39 of the Appellants bundle). There is no comment in his evidence.
  - Again, in paragraph 20 the FTT Judge queries why the Sponsor does not know what “essential living needs” he provides for. However, it is recorded in oral evidence at paragraph 10, that the remittances paid the bills including electricity and food bills. Evidence was provided at pages 44 – 51 of the Appellant’s bundle of spending on shopping, and indeed an electricity bill in the Sponsor’s name for the property in question. There is no mention of this evidence in the decision, although in submissions it was pointed out the receipts for shopping bills were dated the same day as the money transfers (paragraph 15). Consideration was necessary in the circumstances, because the evidence was part of a central issue to be decided.
  - Indeed it appears unclear whether the FTT Judge accepted that the Sponsor bought the Appellants the necessary refrigerator, which is referred to in the oral evidence (see paragraph 12), and forms part of the findings at paragraph 19, which appears to accept the fact of purchase for the Appellants.
- 5) It is noted in paragraph 18 of the decision, there appears to be an irrational finding in that the FTT Judge states “*First, the Sponsor only began sending monies from the UK from 22 August 2019 to 30 March 2022, and there is a flurry of 33 receipts I find that these remittances were contrived to falsely create the appearance of a dependency for essential needs before the law changed. After all the Sponsor was in the UK from July 2019*”. Precisely, the Sponsor arrived in July 2019, presumably arranged accommodation and work, and set about supporting his sister and her family sending monies the very next month of August 2019, yet it appears to be held against the Sponsor that he did not send monies in July. In these circumstances the finding is legally perverse. Indeed, the fact of a prolonged period of support for the Appellants should have been noted, particularly because that support, and indeed the support from the Sponsor predated the application made in January 2020.
4. Before the Upper Tribunal Mr Williams conceded that the Judge had erred in law in a manner material to the decision to dismiss the appeal of the reasons set out in the grounds seeking permission to appeal. On that basis I set the decision of the Judge aside.
5. In relation to disposal, recent guidance has been provided as to whether it is appropriate for an appeal to be retained within the Upper Tribunal or remitted to the First-Tier Tribunal in the case of Begum [2023] UKUT 00046.
6. The position of both advocates is that the appeal should be remitted to the First-tier Tribunal.

7. Paragraph 7.2 (a) and (b) of the Practice Statement relating to disposals of appeals by the Upper Tribunal reads:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

8. In the current appeal there is an accepted mistake of fact made by the Judge relating to the ages of the children, an accepted error in relation to the application or otherwise of the correct legal principles, and an accepted error in failing to consider, or to enable a reader of the determination to properly ascertain that, all relevant evidence had been considered by the Judge and factored into the decision-making process. I find that considering matters as a whole the effect of the accepted errors has been to deny the Appellants of a fair hearing and to have the case put considered by the First-tier Tribunal properly.
9. In relation to the extent of the fact finding that will be required in order to determine the appeal, it is clear that the core issue of whether to remittances sent by the EEA national sponsor are required to meet the essential needs of the Appellant. This is an appeal in which the identified unfairness is sufficient to dispose of the issues in the appeal to the extent that the hearing before the Judge was of no value to the parties at all. I find on that basis both exceptions set out in paragraph 7.2 are made out and that it is appropriate for the appeal to be remitted to the First-tier Tribunal (IAC) sitting in Birmingham to be heard afresh by a judge other than Judge Juss.

## **Decision**

10. The First-tier Tribunal Judge materially erred in law. That decision is set aside. The appeal is remitted to the First-tier Tribunal (IAC) sitting at Birmingham to be heard afresh by a judge other than Judge Juss.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**22 March 2023**