



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

**Case No: UI-2021-001738**  
**First-tier Tribunal No:**  
**EA/06356/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 30 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**IRFAN YAQOOB**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Abbas, Counsel, instructed by Imperium Group  
Immigration Specialists

For the Respondent: Mr S Whitwell, Senior Presenting Officer

**Heard at Field House on 15 March 2023**

**DECISION AND REASONS**

**Introduction**

1. This is the re-making of the decision in this appeal following my previous decision that the First-tier Tribunal had erred in law when dismissing the appeal (the error of law decision is annexed to this re-making decision).
2. The Appellant is a citizen of Pakistan who resides in that country. He applied for a family permit under the Immigration (European Economic

Area) Regulations 2016 ("the Regulations") to join his brother, Mr Imran Yaqoob Iqbal, a Spanish citizen ("the sponsor"), in the United Kingdom. The appellant claimed that he was dependent on the sponsor. The respondent was not and is not satisfied that this is in fact the case.

3. There is no dispute as to the familial relationship between the appellant and the sponsor. The sole issue in this case is whether there is a relationship of dependency; in other words, whether the appellant relies wholly or in part on funds sent by the sponsor in order to meet his essential living needs in Pakistan.
4. In considering this issue I have had regard to the following evidence:
  - (a) a consolidated bundle, indexed and paginated 1-359;
  - (b) a supplementary bundle, indexed and paginated 1-17;
  - (c) the oral evidence of the sponsor.
5. The sponsor gave his evidence in English. It is a matter of record.
6. At the outset of the sponsor's evidence, it became clear that his wife had come to the United Kingdom on 11 June 2021 in possession of a family permit. This event pre-dated the hearing before the First-tier Tribunal. On the evidence before him, the judge had found that the sponsor's wife had been residing in Pakistan. In my error of law decision, I concluded that this finding had been open to the judge, at least on the evidence before him, and I preserved it. For reasons in respect of which I am unclear, it appears as though the judge was not informed about the sponsor's wife's entry to this country. In any event, the accepted fact of her entry in 2021 clearly undermined the sustainability of the preserved finding.

### **The parties' submissions**

7. Mr Whitwell acknowledged the volume of evidence, but suggested that it was not perhaps as detailed as might first appear. He asked me to place a little weight on handwritten invoices and receipts. Given that

remittances were received in cash, it was difficult to “follow the money”. The sponsor did not have detailed knowledge about what the appellant spent his money on. Mr Whitwell described the sponsor’s oral evidence as not being given “in the most straightforward manner”. It appeared as though the appellant had siblings residing in the USA and Canada, yet there was no evidence from them. There was query as to whether the appellant had more than one bank account.

8. Mr Abbas submitted that the sponsor’s oral evidence had been given passionately, and it was credible. The sponsor had continued to send money over to Pakistan notwithstanding the fact that his own wife come to this country in June 2021. The receipt of remittances in cash form was commonplace and provided an important context in this case. The sponsor had not tried to hide the existence of the siblings in the USA and Canada. An explanation had been given as to why they would not provide financial assistance. All told, dependency had been demonstrated.

9. At the end of the hearing I reserved my decision.

### **Findings of fact**

10. There is no dispute that the sponsor has been sending relatively significant amounts of money to the appellant over the course of many years now. I find that that has indeed occurred.

11. It is quite clear that the remittances have always been received in cash form. Thus, the fact that the remittances do not appear in bank statements is beside the point. It is entirely plausible that, once received in cash, the appellant would spend it as required and may only deposit a small proportion of the funds into a bank account, if any at all. It follows that I reject the suggestion from Mr Whitwell that the cash-based remittances tend to undermine the overall credibility of the claimed dependency.

12. The appellant’s written evidence is that he lost his business some years ago and has since that time being entirely dependent on the

sponsor to support him and his daughter (the appellant is divorced from the daughter's mother). For the avoidance of any doubt, there is no suggestion that the ex-wife's has provided the appellant with funds.

13. There is no documentary evidence relating to the appellant's former business and the circumstances in which it ceased to operate. However, the appellant has been consistent in his assertion. Beyond that, the sponsor has also consistently stated that the appellant's business went bust.
14. The question then arises as to what I make of the sponsor's evidence. Mr Whitwell described it as having been given in "not the most straightforward manner" and was "vague". I disagree. Having seen and heard him, I find that the sponsor was a strong witness. To my mind, he gave his evidence in a demonstrative and candid manner. Rather than being evasive in any way, I find that the term "passionate" is apt, and that it in no way detracted from his credibility; indeed, the opposite is true. What he told me was consistent with the written evidence, both the witness statements and the supporting documents which have been provided over the course of time. He accepted that he did not know every detail about, for example, the appellant's daily expenditure, but he did not attempt to guess or exaggerate. What Mr Whitwell described as "vague" evidence was, I find, an honest attempt by the sponsor to provide what information he could.
15. He told me about the siblings in the USA and Canada without being prompted, an element of his evidence which I regard as being candid and supportive of his overall credibility.
16. I find that the appellant did in fact lose his business, as claimed. I am entirely satisfied that the appellant had no other source of income at that time. I accept the explanation for why neither of the other siblings have provided, or would provide, financial assistance to the appellant. It is highly likely that as a cultural norm, sisters would not support a brother and that that responsibility would have fallen on the sponsor's shoulders.

17. I accept the sponsor's evidence, when combined with the remittance receipts, that in recent times he has sent sums to the appellant varying between 68,000 and 100,000 Pakistani rupees a month.
18. It is wholly unsurprising that when the sponsor's wife was still in Pakistan, she lived in the same family compound as the appellant. I accept that that property was their parents'. Remittances would clearly have been used for the benefit of the sponsor's wife and the appellant: that would be expected. It does not of course follow that the appellant was not reliant on the remitted funds for his own essential living needs.
19. It is in my view significant (although certainly not decisive) that the sponsor continued to send money to the appellant even after his wife came to United Kingdom in June 2021. This is indicative of committed financial support and the genuine need of the appellant to receive such support.
20. I am satisfied that the appellant has two bank accounts, although only one of them is with the Allied Bank. I accept that the other, with HBL, was left dormant rather than closed.
21. I am satisfied that the appellant has not, at any time since the loss of his business, had any other source of income. His own evidence on this is fully supported by the clear and credible evidence given by the sponsor, who was adamant that the appellant would not keep secrets from him. In addition, there is no other evidence before me which hints at other sources of undisclosed income.
22. I turn to the evidence of what the appellant has spent the remitted funds on in Pakistan. As a general context for my consideration I accept the proposition that the day-to-day financial interactions undertaken by the appellant would have been on a cash basis, as claimed. In respect of the numerous invoices and receipts contained in the bundles, I see nothing implausible about the fact that the majority of them are handwritten. Indeed, that is probably unsurprising. This documentary

evidence covers a variety of purchases ranging from groceries to the purchase of school uniform for the appellant's daughter. I note also that there are official utility bills which appear genuine, at least to my eyes, and in respect of which no issue has been taken by the respondent.

23. Taking that documentary evidence into account, together with all other sources, I am satisfied that the money received by the appellant from the sponsor has been, and continues to be, used for the purposes of essential living needs, in particular and food.

### **Conclusions**

24. In light of my findings of fact, I conclude that the appellant has shown that he is, and has been for a considerable period of time, dependent on the sponsor in order to meet his essential living needs. It follows that dependency under regulation 8 of the Regulations has been proved.

25. In turn, this appeal must be allowed.

### **Anonymity**

26. There is no reason to make an anonymity direction in this case.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.**

**The decision in this appeal is re-made and the appeal is allowed.**

**H Norton-Taylor**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 28 March 2023**

**ANNEX: THE ERROR OF LAW DECISION**

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

Case No: UI-2021-001738

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**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**IRFAN YAQOOB  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S K Abbas, Counsel

For the Respondent: Ms S Cunha, Senior Presenting Officer

**Heard at Field House on 9 December 2022**

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan who resides in that country. He appeals against the decision of First-tier Tribunal Judge Athwal ("the judge"), promulgated on 13 October 2021. By that decision (which had been made on a consideration of the case without a hearing, pursuant to the Appellant's request) the judge dismissed the Appellant's appeal against the Respondent's decision, refusing to issue him with a family permit under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").
2. The application for a family permit was based on the claim that the Appellant was the brother of a Spanish national residing in the United Kingdom ("the Sponsor"). It was said that the Appellant was dependent on the Sponsor and thus qualified under regulation 8 of the 2016

Regulations as an extended family member. The Respondent was not satisfied that the claimed dependency had been substantiated.

3. On the evidence before him, the judge concluded that the Sponsor's wife in fact resided in Pakistan. He did not accept that she resided in the same household as the Appellant in that country and therefore the judge concluded that the Appellant was not a member of the Sponsor's household: [23]. The judge went on to conclude that he was not satisfied that the money which he accepted was being sent back by the Sponsor to Pakistan, and being collected by the Appellant, was in fact being used by the latter to meet his essential needs. By implication, the judge took the view that the money was being passed through the Appellant for the benefit of the Sponsor's wife instead: [24]. At [25] the judge concluded that: "The Appellant has not provided any evidence to corroborate his claim that he has no income and is entirely dependent upon his brother". On this basis dependency had not been made out and the appeal was accordingly dismissed.
4. The Appellant put forward two grounds of appeal. First, it was said that the judge had failed to take account of the evidence as a whole, particularly that set out in an affidavit sworn by the Appellant on 16 June 2020, in which he stated that a property business had collapsed and he had lost everything except for a jointly owned home in which he resided. The judge had also failed to consider or give reasons for rejecting the Appellant's claim that he was "totally dependent" on the Sponsor. The second ground of appeal asserted that the judge had applied an incorrect test to the question of dependency, requiring the Appellant to show that he was "entirely" dependent on the Sponsor, when the test was simply whether the Appellant relied on money from the Sponsor to meet his essential living needs.
5. Permission was granted on both grounds. Following the grant of permission, a Rule 24 response was provided by the Respondent which sought to uphold all aspect of the judge's decision.
6. At the hearing I received concise oral submissions from Mr Abbas and Ms Cunha. Ms Cunha did not concede the point, but acknowledged that the judge may not have considered some or all of the documentary evidence provided by the Appellant to indicate that he was financially dependent on the Sponsor, with particular reference to what was said at [25].
7. At the end of the hearing I reserved my decision.
8. I have concluded that the judge did materially err in law, for reasons which I now set out. Before doing so I confirm that I have exercised appropriate restraint before interfering with the judge's decision.
9. I am satisfied that the judge was entitled to find that:
  - (a) the Sponsor's wife did indeed reside in Pakistan; and



(b)that she did not necessarily reside in the same household as the Appellant (although it might appear somewhat unusual for her to be living elsewhere).

10. The evidence on this point was a good deal less than clear and it was open to the judge to conclude as he did at [23].
11. The error lies in respect of the dependency issue. The judge did not adequately explain why he concluded, by implication, that the money which in fact was being sent by the Sponsor to the Appellant was then being passed on in its entirety (at least that is how I read the judge's analysis) to the Sponsor's wife. Both the Appellant and the Sponsor had provided evidence, albeit in fairly thin form, to assert that the former was "totally" dependent on the latter. Some documentary evidence in support of this had in fact been provided in the form of certain receipts and other items. Such documentary evidence was alluded to in [23], but there was no analysis of this by the judge when he came to address the question of dependency in [24] and [25]. Indeed, at [25] the judge stated that the Appellant had failed to provide "any evidence" to corroborate the claim of dependency.
12. Reading the judge's decision fairly and even exercising appropriate restraint, I conclude that the reader is left without an adequate explanation as to why the judge concluded that there was no relevant dependency. There was some evidence before him and there is no clear finding as to whether this was rejected as being unreliable. The Sponsor's (brief) evidence was not considered. It was of course difficult for the Appellant to prove a negative (i.e. to prove that he had no other source of income) and the documentary evidence, including certain receipts and such like, whilst in no way decisive, provided at least an indication of expenditure on basic needs.
13. Stepping back from what the judge said and did not say, there was the possibility that money sent by the Sponsor to the Appellant was in part being used by the Sponsor's wife, but with a portion of it being used by the Appellant. This possibility was not the subject of any finding. I regard the error identified previously as being material to the outcome (i.e. it could have made a difference).
14. Overall, the judge erred in law such that his decision should be set aside.
15. I have considered whether I should go on and re-make the decision on the evidence currently before me. However, I note that the judge's decision was made in late September 2021. In my view a clear picture of the current circumstances should be provided before the decision is re-made. Therefore I issue directions to the parties as regards the provision of further evidence and this case will be retained in the Upper Tribunal and listed for a resumed hearing in due course.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**

**This appeal shall be retained in the Upper Tribunal and the decision re-made in due course following a resumed hearing.**

### **Directions to the parties**

1. **No later than 14 days after** this decision is sent out, the Appellant must file and serve in electronic form a consolidated bundle (indexed and paginated) containing all evidence now relied on (including any evidence post-dating the judge's decision);
2. At the same time, the Appellant's representatives must inform the Upper Tribunal whether the Sponsor will attend to give live evidence and, if he does, whether he will require an interpreter and if so, in what language;
3. The Respondent may, if so advised, file and serve any additional evidence she wishes to rely on in electronic form (indexed and paginated) **no later than 28 days after** this decision is sent out;
4. The parties may apply to vary these directions.

**H Norton-Taylor**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**13 January 2023**