



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

Case No: UI-2022-002764

First-tier Tribunal No: EA/07532/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 23 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MOHAMMAD RAFIQUE**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Holmes instructed by MCR Solicitors.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 23 May 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Raymond ('the Judge') promulgated on 17 January 2022 following consideration of the merits of the appeal on the papers, in which the Judge dismissed the appellant's appeal against the refusal of an application for a Family Permit, to enable the appellant to join his brother, a Spanish national exercising treaty rights in the UK, as an extended family member.
2. The appellant is a citizen of Pakistan born on 18 November 1972. His brother Mr Siddique, born on 1 January 1982, was granted pre-settled status on 5 November 2020.
3. The Judge noted the family registration showed the appellant and sponsor are two of four brothers, the other two being Mohammed Rizwan born 1 December 1985 and Boram Saddique born on 4 April 1990. Mr Tan confirmed that the siblings' appeals have been heard, with case reference EA/07533/2021 being remitted to the First-tier Tribunal for an oral hearing by the Upper Tribunal, and EA/07065/2021 refused by the First-tier Tribunal which also refused permission to appeal to the Upper Tribunal on 18 April 2023. The applications by the appellant's siblings were supported by the same sponsor.

4. The Judge's findings are set out at [8] of the decision under challenge in the following terms:
  8. I find that there is a striking lack of evidence on the totality of the circumstances, as to all employments within the extended family in Pakistan, their past educational and employment history, the ownership of properties within the family, their bank statements, documented proof of liabilities rather than a one page submission of a schedule of income from the sponsor and expenditure, educational obligations if children are involved, the tax status of the three brothers, and one could go on. Before it could begin to be assessed that three mature and physically able men are completely dependent, and not just the appellant himself, upon the sponsor in the UK for their basic essential needs As things stand I find that the present application is completely without any merit, because reliance has been placed upon Regulation 8 in an attempt solely to achieve family reunion, and there being no credible evidence for any dependency as to basic and essential needs on the part of the appellant and his family, and his brothers and their families, for that is how the application is put, upon the sponsor.
5. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis it was said to be arguable that the Judge had erred in the assessment of dependency.

#### Discussion and analysis

6. The grounds seeking permission to appeal refer to [4] of the decision under challenge in which the Judge refers to a letter provided by the appellant dated 26 January 2019, purportedly advising the appellant that his services are no longer required, and commenting that there was no evidence that the appellant applied for other work since or why he would have failed to do so, and expressing the view that the family can take advantage of someone who has gone abroad and done well. The grounds assert the appellant did not need to provide evidence of whether he had applied for work since being released from his job or why he would have failed to do so. The comment at [4] is factually correct and are not the Judge's findings which are set out at [8] as noted above. At [4] the Judge sets out the appellant's response to the refusal and is a factual comment that bar the material provided in the documents was no further evidence.
7. Lack of evidence is something specifically commented upon in [8]. The assertion in the grounds the Judge failed to consider the appellant's witness statement is without merit. The Judge was not required to set out the content of the statement in detail and it was clear that it was considered in arriving at the findings made.
8. It is not disputed that remittances are often sent from family members working abroad and the Judge does not say otherwise.
9. The grounds assert that the appellant had provided evidence that he was not working in Pakistan and thus was fully dependent upon the sponsor and that there was no requirement for him to provide evidence of his other family members in Pakistan as they were not part of the application, and that undue weight was placed upon the appellant's ability to work in Pakistan which is not the required test,. The question of why the appellant chose not to work was said to be relevant.
10. Before the Upper Tribunal Mr Holmes repeated the points made in the application for permission to appeal and submitted that no reasons have been given by the Judge as to why all of the evidence had been rejected and that the error was material.

11. It is important that this case is placed in context. The refusal by the Entry Clearance Officer (ECO) dated 23 March 2021 raised a number of issues. The text of the refusal is in the following terms:

#### The Decision

- You state that your Brother is a Spanish national. You have provided evidence that your sponsor holds a Spanish passport and identity card.
- Only those family members referred to under Article 2 of the Directive 2004/38/EC have an automatic right to join or accompany an EEA family member to another member state when that EEA national is exercising a Treaty right.
- Article 3 of Directive 2004/38/EC provides the basis for a member state to consider other relatives, such as 'extended family members' and determine the terms of entry and residence to such 'beneficiaries' in accordance with their own domestic legislation. (Article 3(2)).
- The United Kingdom has transposed the terms of Article 3 into Regulation 8 of the Immigration (European Economic Area) Regulations 2016. As Regulation 8(4) makes clear, the United Kingdom is allowed to set terms on when it will accept extended family members and allow them to reside in the United Kingdom as family members of an EEA national.
- To meet the relevant EEA Regulation 8, you must demonstrate that you are an 'extended family member' of your EEA sponsor and that your EEA sponsor is a qualified person. This means relatives of the EEA national must be dependent upon their sponsor. Financial dependence should be interpreted as meaning that you need the financial support of the EEA national or his or her spouse/ civil partner to meet your essential needs in the country where you are present and that the sponsor will be able to support you once in the UK.
- On your application you state that your sponsor has resided in the UK since 10 August 2020 and that you are financially dependent on him. As evidence of dependency you have only provided 4 recent money transfer send receipts from your sponsor to you dated 19 August 2020 to 25 November 2020. It is noted that the corresponding collection receipts or a bank statement in your name have not been submitted to verify any of these funds were received by you. As a result, we are unable to confirm the receipt of any funds and this limited amount of evidence in isolation does not prove that you and your family are financially dependent on your sponsor or that any funds sent to you by him were used to meet your essential needs. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor and I would expect to see substantial evidence of this over a prolonged period.
- I would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.
- The submitted evidence shows that he earns a net income of approximately £1400 per month, however you have not provided any further documentation evidencing your sponsor's current financial situation in the United Kingdom. Due to his low income and lack of documentation, I am not satisfied that it is sustainable for your sponsor to financially support you, your 2 siblings and your families while meeting his own needs and the needs of any family members already reliant upon him.
- On the evidence submitted in support of your application and on the balance of probability, I am not satisfied that you are dependent on your sponsor. I am therefore not satisfied that you are a family member in accordance with regulation 8 of the Immigration (European Economic Area) Regulations 2016.

I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all of the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.

12. The ECO was therefore concerned about the lack of evidence in relation to support provided by the Sponsor and/or evidence that the funds reflected in money transfers are actually received by the appellant. There is nothing arguably wrong with the ECO also referring to the lack of evidence of the appellant's and family's circumstances in Pakistan. Even if there had been evidence that the remittances sent from the UK were being received by the appellant the issue is whether those funds have been sent to meet that individual's essential needs. The grounds of appeal argued that the Judge erred because as the appellant claimed he was unemployed the money must be needed to meet his needs as he has no income of his own. If, however, there are sufficient funds within the family unit in Pakistan which meets the essential needs of the family as a whole, it may not be arguable that any remittances are required to meet the appellant's essential needs. It was a lack of clarity in relation to that aspect which is specifically referred to in the refusal notice which the Judge finds has not been addressed in the limited evidence made available.
13. The ECO also made specific reference to Sponsor's financial circumstances in the UK. The ECO was entitled to do so as an extended family member has no automatic right to join a family member in the UK under the Immigration (EEA) Regulations 2016 unless entry has been facilitated by the UK. The ECO is required to undertake a comprehensive assessment of all relevant circumstances which includes those of the UK based sponsor. The ECO is entitled to take into account matters such as the public interest in individuals not becoming a burden on the social assistance of the UK if they are permitted to enter as extended family members, both in relation to their own situation and those of the EEA national sponsor.
14. The refusal on this point is very specific, namely that has the Sponsor has a low income, has failed to provide detailed information of his financial situation in the UK, and had not shown that it would be sustainable for him to support the appellant, his two siblings, and their families whilst meeting his own needs and those of other family members reliant upon him. As noted above, Mr Tan provided evidence of claims and appeals against the refusals being made by the appellant's siblings who are also supported by the Sponsor in their applications.
15. Therefore, even if there had been evidence to show that remittances being sent from the UK were needed to meet the appellant's essential needs, the appeal would not succeed on the basis of the lack of evidence of the Sponsor's own circumstances within the UK. The findings of the Judge that the appellant could not meet the requirements of regulation 12 of the 2016 Regulations is clearly a finding within the range of those available to the Judge on the limited evidence provided.
16. Credibility issues may properly arise in cases where an ECO clearly sets out issues that are relevant to the merits of a claim based upon a lack of supporting evidence and when, despite being given the opportunity to do so, evidence has not been provided to support the claims made in an application.
17. I do not find any breach of Community rights has been made out on the facts as presented to the Judge. As no legal error material to the Judge's decision to dismiss the appeal is made out, the appeal is dismissed.

### **Notice of Decision**

18. No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**1 June 2023**