



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

Case No: UI-2022-005738,  
EA/05801/2021  
UI-2022-005739, EA/05803/2021  
UI-2022-005740, EA/05806/2021  
UI-2022-005741, EA/05808/2021  
UI-2022-005743, EA/05809/2021  
UI-2022-005744, EA/11141/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 30 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT  
DEPUTY UPPER TRIBUNAL JUDGE SILLS**

**Between**

<b>MS NAZIA BASHIR</b>	<u>1<sup>st</sup> Appellant</u>
<b>MASTER ABDULLAH QAISAR</b>	<u>2<sup>nd</sup> Appellant</u>
<b>MISS ESHAL FATIMA</b>	<u>3<sup>rd</sup> Appellant</u>
<b>MISS HANIA QAISER FAROOQ</b>	<u>4<sup>th</sup> Appellant</u>
<b>MISS MANAHIL QAISER</b>	<u>5<sup>th</sup> Appellant</u>
<b>MISS UMME AIMAN</b>	<u>6<sup>th</sup> Appellant</u>

**(NO ANONYMITY ORDER MADE)  
and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Raza  
For the Respondent: Ms Nolan

**Heard at Field House on 14 August 2023**

**DECISION AND REASONS**

1. The Appellants appeal, with permission, against the decision (the Decision) of Judge Cohen (the Judge) dated 3 August 2022 dismissing their appeal.

#### Factual Background

2. The Appellants are Pakistani nationals. The First Appellant is the mother of the other 5 Appellants. They applied for entry clearance as the dependent relatives of the First Appellant's uncle and Sponsor, Mr Ahmad Hassan Waqar, a German citizen. The Respondent refused the application on 10 March 2021 for the following reasons. The Respondent did not accept that the Appellants were dependent upon the Sponsor and so did not accept that the Appellants were the extended family members of the Sponsor for the purposes of Reg 8 of the Immigration (European Economic Area) Regulations 2016 (the 2016 Regs). While there had been evidence of money being sent, there was no evidence of the money being received. The Appellants had not set out evidence fully detailing the family's circumstances, such as income and expenditure.
3. The Appellants appealed. That appeal came before the Judge on 7 January 2022. It was not until 3 August 2022 that the Judge promulgated the Decision dismissing the appeal. At [20-27] of the Decision, the Judge found as follows. There was a discrepancy between the First Appellant's claims about the Sponsor's earnings and the evidence from the Sponsor's employer. The First Appellant had sought to enhance the evidence in her favour. The First Appellant had not provided evidence of the receipt of funds from the Sponsor. This was indicative of the fact that the claims about funds being sent did not reflect the factual position. The First Appellant had not explained how she met her essential needs in months when money was not sent. The First Appellant's breakdown of her income and expenditure was not reliable. The Sponsor's bank statements did not show substantial balances. This was indicative of the fact that the Sponsor was not supporting the Appellants and that they had additional sources of income in Pakistan. The Sponsor was not capable of supporting the Appellants and her children in the UK without recourse to public funds. The fact that the Sponsor had not found accommodation for the Appellants showed he had not taken his obligations seriously.
4. The Appellants' application for permission to appeal was refused by the First Tier, and renewed to the UT. The grounds argued as follows. First, the Judge erred in finding there to be a discrepancy as to the Sponsor's income as the Sponsor's payslips did show him earning £800 per week at times. Second, the Judge acted perversely and gave inadequate reasons for relying on the absence of signed receipts for funds received, given that the First Appellant had provided bank statements showing the receipt of funds. Finally, the Sponsor's ability to maintain the Appellants in the UK was irrelevant to the issues before the Tribunal.
5. Judge Norton-Taylor granted permission on 3 January 2023. In doing so he found that each ground of appeal was arguable.

#### The Hearing

6. In the hearing before us, Ms Nolan for the Respondent accepted that each ground of appeal was made out and that the Decision of the Judge should be set aside. In the light of that concession, we confirmed that we would set aside the Decision of the Judge with no findings preserved. Both parties invited us to

remake the decision rather than remit the appeal to the First-tier. We therefore confirmed that we would remake the decision. The Sponsor attended the hearing but Ms Nolan did not wish to cross examine the Sponsor and so he was not called to give evidence. We invited the parties to make submissions. Ms Nolan did not draw to our attention any particular pieces of evidence or make any submissions other than inviting us to determine the matter based on the documentary evidence before us. Mr Raza submitted that there was no challenge to the factual circumstances as asserted by the Appellants, namely that the First Appellant was a single mother in Pakistan and that her only income was from the Sponsor. As a result, the Appellants were dependent on the Sponsor for all their essential needs. We reserved our decision.

### Legal Framework

7. The legal test to establish dependency for the purposes of Reg 8 of the 2016 Regs was considered in the case of Lim v ECO [2015] EWCA Civ 1383 at [32]:

*32. In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant.*

### Findings

8. Having found that the Judge made an error of law and set aside the Decision with no findings preserved, we now proceed to remake it. The single issue in this appeal is whether the Appellants are dependent on the Sponsor as claimed.
9. We accept at the outset the point made by Mr Raza, that before us Ms Nolan for the Respondent did not challenge any of the factual claims made by the Appellants in this appeal. Nor did she draw to our attention any issues with the documentary evidence submitted by the Appellants. Hence the Appellants' unchallenged case is that the First Appellant is a single mother with 5 children, who receives no support from the children's father. In these circumstances it is at least plausible that the Appellants may require some support to meet their essential needs.
10. It was accepted by Ms Nolan before us that the Appellants had provided evidence of money being sent by the Sponsor to the First Appellant, and of money being received by the First Appellant. Ms Nolan did not raise any discrepancies in relation to the evidence concerning the money sent to the Appellants. We thus accept that the Sponsor is sending money to the Appellants as claimed, and that the First Appellant has received the money sent. We also note that the First Appellant has provided her bank statements in support of the appeal. This is a significant disclosure of her financial circumstances. Ms Nolan raised no issues concerning the contents of the bank statements submitted. We also take into account the Sponsor's evidence that he has been supporting the

Appellants for a long time and that the evidence of the transactions showing money being sent to Pakistan begins in 2018 (see e.g., AB168). We consider that the evidence dating back to 2018 demonstrates a reasonably long term commitment from the Sponsor to the Appellants and is supportive of the Appellants claim that they require this support to meet their essential needs.

11. Mr Raza referred us to the detailed income and expenditure schedules contained in the Appellants' bundle at AB38-45. Ms Nolan raised no issues in relation to these schedules. It was not suggested by Ms Nolan that the schedules were inconsistent with either the bank statements or the evidence of money being sent. The schedules shows that the money spent by the Appellants each month roughly equals that sent by the Sponsor. The schedules also show that the money is spent on essential items such as transport, energy, medical costs, and groceries, though not all items listed as expenditure are essential items. The First Appellant has also provided receipts for groceries. (AB122-132). No issue was taken with this evidence before us.
12. We note that the amount sent by the Sponsor fluctuates from around £180 to around £430 per month. There was no challenge to the claims about the Sponsor and his wife's income. Given the Sponsor and his wife's income, around £2543.49 and £793.34 per month respectively (see AB58 and 26) we consider that the amounts sent are affordable amounts for the Sponsor to be sending to support the Appellants in Pakistan.
13. Ms Nolan accepted before us that the sole issue in the appeal was whether the Appellants were dependent upon the Sponsor. The question of whether the Sponsor could afford to maintain and accommodate the Appellants in the UK had not been raised in the decision letter. Ms Nolan confirmed that this issue was not relevant to the question of dependency and so irrelevant to the issues before us. Similarly, we consider the fact that the Sponsor has not yet arranged accommodation for the Appellants is not a factor of any significance given that their appeal has remained outstanding.
14. In view of the above, we find as follows. We are satisfied that the Sponsor is providing the Appellants with the support claimed by the First Appellant and the Sponsor. We are satisfied that the First Appellant's income and expenditure is as claimed in the schedules provided by the Appellants at AB38-45. We are satisfied that the Appellants have no other source of income other than the support provided by the Sponsor. We therefore find that the Appellants cannot meet their essential needs from their own resources. They require the support of the Sponsor to meet those essential needs. Hence the Appellants are dependent upon the Sponsor and so satisfy the requirements of Reg 8 of the 2016 Regs.

### **Notice of Decision**

The decision of Judge Cohen is set aside.

We remake the decision and allow the appeal on the basis that the Appellants satisfy the requirements of Immigration (European Economic Area) Regulations 2016.

Judge Sills

Deputy Judge of the Upper Tribunal

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Immigration and Asylum Chamber  
15 August 2023