



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/00835/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9th January 2019**

**Decision and Reasons Promulgated
On 07th February 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**AMIR SHAZAD
(anonymity direction not made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr P Georget, instructed by Whitefield solicitors

For the Respondent:

Ms J Isherwood (on 13th November), Mr E Tufan (on 9th January),
Senior Home Office Presenting Officers

DETERMINATION AND REASONS

1. First-tier Tribunal Judge Pickup dismissed the appellant's appeal against the decision of the respondent to refuse to issue him with a family permit as an extended family member – the younger brother of Mr Imran Bibi who is Spanish Citizen (since March 2014). For the reasons set out in a decision sent to the parties on 22 November 2018 I found an error of law in the decision of First-tier Tribunal judge Pickup such that I set aside his decision to be remade. At the resumed hearing before me on 9th January 2019 I had before me a bundle of

documents filed on behalf of the appellant under cover of a letter dated 20th December 2018; a skeleton argument filed on behalf of the appellant and the case of *Lim* [2015] EWCA Civ 1383. I heard oral evidence from Mr Imran Bibi, the appellant's older brother, and I heard submissions from both representatives.

2. There was no dispute between the parties that the appropriate test to be applied was that set out in *Lim* [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. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.”

3. A number of issues that had arisen before the First-tier Tribunal and at the error of law hearing had fallen away by the time the resumed hearing took place. It was no longer in issue that

- Mr Bibi and the appellant are brothers with the same mother and father;
- Mr Bibi, the oldest son in the family, has been a Spanish Citizen since about March 2014;
- Mr Bibi has been in the UK exercising Treaty Rights since 7th August 2014;
- Mr Bibi left Pakistan for Spain in about 2000;
- Prior to leaving for Spain Mr Bibi had lived with his mother and father, brother and other family members in the family home;
- Their father died in 2011;
- Their mother, Mr Bibi's wife and children and the appellant continue to live in the family home;
- Mr Bibi has sent money back to Pakistan since leaving for Spain; sometimes by way of bank transfers and other times by taking cash when he travels there;
- The appellant is not a member of Mr Bibi's household as defined in the context of the 2006 EEA Regulations.

4. The table of payments made to Pakistan by Mr Bibi that appeared at pages 121- 122 of the appellant's bundle was not challenged by Mr Tufan save as to their purpose. There was no submission by Mr Tufan that the sums transferred or taken to Pakistan were not frequent.

5. The critical and core issue before me was whether the appellant's basic needs were met by his brother, as claimed and/or whether he was working. Intertwined with this is the credibility of Mr Bibi's evidence.

6. The written evidence of Mr Bibi and the appellant was that the appellant was not working but that he had sought employment without success because of the economic situation in Pakistan; that the money sent by him to Pakistan was for the daily needs of the appellant, Mr Bibi's wife and his children. The written evidence does not refer to the appellant and Mr Bibi's mother and any income she may or may not have or whether funds were used for her maintenance.
7. In oral evidence Mr Bibi said that the appellant had undertaken some studies at college but had not completed his studies, his studies were "normal studies", that he thought the cost had been about 5000 Pakistani Rupees per month, that he had finished college about 11 or 12 years ago, that he had done some jobs but left. When asked what jobs he had done, Mr Bibi said that his last job had been, he thought, about five years ago clerking in an office, that he thought the appellant had done some jobs in offices in the private sector in different offices. When asked why he wasn't sure he said that the appellant was looking after their mother, taking her to hospital and sometimes he left the job he had, for her. He also said that the reason the appellant could not obtain employment was definitely because of the economic situation. In his oral evidence Mr Bibi also said that his father had been in government service and had, after he died, left a small pension which amounted to about 20,000 rupees per month; that pension went to his mother and about half of that went on her medical treatment; that no rent was paid on the family home; that the equivalent of the balance of the pension was spent on his children's school fees and the rest of the money that went to the household was used for household expenses. Actual payments were made by the appellant from the money that was sent by him. He said that other occasional expenses included, for example, where there was a family wedding and money was given.
8. There was no documentary evidence in the bundle to corroborate the evidence regarding the appellant's occasional employment, his school/college fees/qualifications, the school fees paid for Mr Bibi's children, the pension paid after the father's death or the mother's ill health and medical treatment or the cost of treatment. There was no explanation provided for the lack of that evidence or why there had been no reference to those expenses in any of the written statements. There was no break-down of household expense – although it may not be possible to obtain corroborative evidence, a breakdown could nevertheless have been provided. The oral evidence was the first time it became apparent that the appellant has worked in the past. Different explanations were given why it was claimed he was not working.
9. Most of the remittance advice slips in the bundle show, where receipt is endorsed, receipt of the money in cash to the appellant. I have little doubt but that the monies are collected by him and that they are utilised for the benefit of the family as a whole – the mother, wife, children and the appellant. There is no indication that there is a bank account in Pakistan in the name of the appellant – or his mother for receipt of the pension.
10. Mr Tufan submitted that Mr Bibi was evasive and contradictory in his answers to questions about finance. I do not agree that he was evasive, but I am not satisfied that either he or the appellant has given sufficiently accurate and detailed evidence about the family finances to enable a finding to be made

that the funds Mr Bibi sends to Pakistan are to enable basic needs to be met, whether for the appellant or the other family members.

11. Mr Georget submitted that there was no doubt that funds were sent to the family and that it was not simply a case of meeting medical and schooling; the sums sent by Mr Bibi were sufficient to support the household when considered in the context of local standards of living.
12. The burden of proof is upon the appellant. The evidence before me is such as to raise significant doubt as to the level of funds that are going into the family finances other than from Mr Bibi. I am unable to find that Mr Bibi's evidence can be relied upon to assist me in my decision. The evidence of the appellant's employment is contradictory and as such I cannot make a finding that the appellant is not working at all or whether he is working sporadically or part-time. I cannot assess the level of necessary household expenses, the funds required for school fees or the funds required for medical treatment. Such evidence could be produced but has not been. Nor is it possible, on the evidence before me, to find on a balance of probabilities that there is partial reliance on the funds sent by Mr Bibi to meet basic needs.
13. Although the funds sent by Mr Bibi may be sufficient to support the family in the context of local standards, that does not mean that they are necessary and required to enable basic needs to be met. The question before me to be resolved is whether the funds are required. That there is financial support is not doubted but there is a lack of evidence that it is required wholly or partially to meet basic needs.
14. I find that on the basis of the evidence before me the funds provided by Mr Bibi are not such as to enable a finding that the appellant is dependent.
15. On the basis of these findings I dismiss this appeal. The appellant has not shown, on a balance of probabilities, that he is dependent upon his brother, Mr Bibi.

Conclusions:

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

I set aside the decision.

I re-make the decision in the appeal by dismissing it.

Date 15th January 2019



Upper Tribunal Judge Coker