



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02463/2018  
EA/00477/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20 March 2019

Decision & Reasons Promulgated  
On 26 March 2019

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MR TOSEEF UR REHMAN KHAN  
MRS NASREEN IHSAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr G Enuezie, solicitor, Chancery West Law Solicitors  
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge Pedro, promulgated on 5 December 2018. Permission to appeal was granted by Upper Tribunal Judge Grubb on 19 February 2019.

## Anonymity

2. No direction has been made previously, and there is no reason for one now

## Background

3. On 30 May 2017, the appellants sought EEA family permits in order to enter the United Kingdom as the direct dependent relatives of their son, Shajee [K] and his German wife. The application of the first appellant was refused on 20 February 2018 and that of the second appellant on 30 November 2017.
4. Hitherto, they had unsuccessfully sought family permits to join their other son, Wajeeh and his EEA national partner. Their appeal against that decision was dismissed by First-tier Tribunal Judge Turquet in a decision promulgated on 18 October 2016.
5. The Entry Clearance Officer's decisions made reference to the earlier unsuccessful appeal. The reasons for refusal were that there was insufficient evidence to show that the sponsoring household would be in any position to support the appellants; that the appellants' bank account was in credit which called into question the claimed dependency, there was no evidence that the rent or bills were being paid by the sponsor and it was not accepted that the regular payments from the sponsor were required for the appellants' essential needs.

## The hearing before the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the appellants were unrepresented, however their sons Shajee and Wajeeh attended, gave evidence and provided a bundle of supporting evidence. In reaching his decision, the judge took into consideration the 2016 decision of Judge Turquet and adopted the findings in rejecting the claims of dependency on the sponsor.

## The grounds of appeal

7. In the grounds of appeal it was contended that the judge failed to assess the documentary evidence which was not before the previous judge as to the financial position of the appellants at the time of the application; that the judge erred in his approach to the principles in Devaseelan (Second Appeals, ECHR, Extra-territorial Effect) [2002] UKIAT 702; erred in requiring historic evidence of dependency; found that there had been an abuse of rights where that point was not relied upon by the respondent; failed to apply the correct test of dependency and lastly erred in relying on the 2016 decision which itself contained errors of law.
8. Permission to appeal was granted on all grounds with the following comment;

*"In reaching his finding that the appellants have not shown they were dependent for their "basic needs" upon their son and daughter-in-law, it is arguable that the judge placed undue weight upon an earlier appeal decision which related to different sponsors (a different son and EEA partner) and failed properly to consider the detailed evidence submitted in this appeal."*

## The hearing

9. Mr Enuezie submitted that he would mainly be arguing that the judge erred in his application of Devaseelan and his failure to take account of the appellants' documents. He said that Devaseelan did not apply because the sponsor, circumstances and documents were all different. Furthermore, it was not reasonable nor relevant for the judge to expect the appellants to produce evidence going back as far as 2013. All the appellants needed to demonstrate was present dependency.
10. Mr Enuezie further argued that the judge was wrong to describe the appellants' evidence as self-serving when it was from independent sources. Indeed, it was accepted that the first appellant was in receipt of a monthly pension. He submitted that while the judge said that the evidence was contrived to boost the appeal he did not set out in clear terms why he came to that decision and materially misdirected himself in law.
11. Ms Willocks-Briscoe submitted that the judge was entitled to take the previous decision as the starting point because the appeal was on the same basis and the findings were applicable. The previous judge concluded that the appellants failed to show they were supported. This was the starting point and there had not been a change in circumstances since that original decision. The judge was not satisfied the evidence presented a true and accurate reflection of the outgoings [12], gave little weight to letters and receipts and was of the view that the situation presented to bolster the appellants' position. The appellants circumstances had not changed only the sponsor and the decision made was open to the judge.
12. In reply, Mr Enuezie contended that the judge was required to consider the evidence and make a determination. The previous decision did not find that there was fraud but that insufficient evidence had been provided. There were no credibility issues. The judge was not entitled to reject the evidence without reasons. How could he say nothing changed if he did not examine the evidence. The only source of income was the pension and the rent and groceries were properly documented unlike the previous appeal. Lastly, the appellants could not have envisaged they needed to provide evidence from 2005-2013 and it was an error to insist on this evidence.
13. At the end of the hearing I decided that the First-tier Tribunal made material errors of law because the previous decision was dismissed for want of supporting evidence and the judge erred in just adopting the previous findings with very little consideration of the new material. There was no option but to set the decision aside and remake the decision.

## Decision on error of law

14. In dismissing the appellants' previous appeal, Judge Turquet took account of inconsistencies between the account put forward by their son, Wajeeh and the visa

application form [20] and noted the absence of supporting evidence showing that the appellants had been supported by Wajeeh prior to 2013[21].

15. Judge Turquet also found there to be a lack of supporting documents relating to the appellants' outgoings [23]. The present sponsor, Shajee, was not a witness in the earlier proceedings [22]. Judge Turquet concluded that as of 6 September 2016, the appellants had not satisfied her that they were dependent on their son Wajeeh.
16. The findings of Judge Turquet in 2016 regarding the appellants' financial circumstances and sponsorship by a different person were not the starting point for their appeal two years later involving a different sponsor. Owing to the judge's adoption of Judge Turquet's findings, he failed to adequately consider the documentary evidence before him, much of which addressed the lack of supporting evidence referred to in the earlier decision. Indeed at [12] the judge summarises the appellants' evidence in the following way, " I find that I can give little weight to the various letters and receipts that have been produced as they do not sway me from the conclusion that Judge Turquet reached in the 2016 decision." That treatment of the evidence and an earlier comment dismissing the new evidence as "self-serving" without further comment was unsatisfactory.
17. The judge was required to assess the evidence provided in the appeal, which included evidence of the appellants' expenses in the form of rent receipts, utility bills, medical bills, receipts for groceries, the rent deed and statement from their landlord. In addition, there was a summary of the appellants expenditure and the proportion that was covered by the remittances from the sponsor.
18. There is no requirement of historical dependency under the Regulations, what is in issue in a case involving a family member is the position at the time of the hearing. Judge Pedro erred in finding at [11] that " *there was the same absence of evidence before me to show that the appellants were being supported by Wajeed, as claimed from 2005 until 2013.*" The appellants' dependency on a different sponsor five years or more prior to the hearing is of no consequence in 2018. The appellants were claiming present dependency on Shajee and his wife and claimed that they had been dependent upon him only since late 2016.

### Remaking

19. Having found material errors of law in the decision of the First-tier Tribunal, I proceeded to remake the decision.
20. Ms Willocks-Briscoe requested time to consider the additional evidence submitted on behalf of the appellants on 12 March 2019, under section 15 (2A) of the Upper Tribunal Procedure Rules 2008. When the hearing resumed, both representatives were in agreement with the relationship between the appellants and the sponsors and that financial support is being provided. The only matter in issue was whether the support of the sponsors was necessary for the appellants' essential needs.

21. Mr Shajee [K] gave evidence. He relied on his earlier statement and in response to Mr Enuezie's questions, he explained that the appellants had changed address and as a consequence the rent had gone up to PKR 15,000 per month since 1 February 2019. The pension was unchanged at PKR 11,068 per month.
22. Mr [K] explained that his parents had to move because the landlord wanted to demolish the property as it was too old and unsafe. Rents were higher in the new area whereas the rent for the previous property was lower because of the age and condition of the property. When asked how the appellants would manage if he did not support them, he stated that they would be homeless and have no money for medicines or living costs. He confirmed the appellants did not live with anyone else.
23. During cross-examination, Mr [K] explained that his father was a police constable before he retired and his government pension did not come with a pension pot which he could access for more funds. His father used to have a pension book stating how much money he would receive but that had been replaced by a direct payment into his bank account. Mr [K] did not know anything more about the terms of the pension and had not seen any other documents relating to it. Ms Willocks-Briscoe asked Mr [K] why his parents had rented such an expensive property. He replied that it was not particularly expensive, it was just average rent for the area. He referred to the evidence of the rent in the bundle. With regard to the lack of challenge to Judge Turquet's decision, Mr [K] explained that this was because the circumstances had changed. When asked why his parents did not use a bank card to pay their expenses, Mr [K] stated that they live in rural area where no shop accepts card payments. Finally, he explained he had prepared the summary of expenses in the appellants' bundle. There was no re-examination.
24. Ms Willocks-Briscoe submissions relied on the decisions refusing the family permits. She argued that no documents relating to the pension have been provided and such documents might show evidence of the ability to draw down further funds. The pension documents could have easily been provided. An ability to draw down funds would have direct bearing on whether the need for material support had been made out, applying Lim [2015] EWCA Civ 1383. She accepted the evidence of support shown in the money transfer receipts. With regard to the change of circumstances since the last hearing, she argued that there was no evidence that average property prices were around PKR15,000, there was no evidence regarding the accommodation or eviction. Furthermore, the receipts were not addressed to anyone in particular.
25. Mr Enuezie submitted that it was accepted that the first appellant was in receipt of a pension. One could not envisage that an issue regarding draw down possibilities would arise in these proceedings. Such evidence which one could get easily in the United Kingdom might not be easily obtainable in Pakistan. The first appellant had a pension book and then direct payments, there was no evidence that there was a lump sum available to be drawn upon. While he understood the situation in Lim where the parents had funds they did not access as they wished to leave a legacy. In this case there was no evidence of the availability of a lump sum. Mr Enuezie acknowledged that there was no evidence of average income or rents in Rabwah, however the

authorities say essential needs must be met by the sponsor. The appellants reside in a rural area and had to find a suitable property. It was not extravagant, it is part of their essential needs. At this point Mr [K] alerted Mr Enuezie to a weblink he had referenced in his witness statements with regard to average living costs in Pakistan.

26. The above-mentioned weblink estimated that it would cost £65 per month for food alone, per person. Finally, the appellants' accommodation costs exceeded their personal income and they required the support of the sponsor. In addition they had health issues for which they needed financial assistance.
27. At the end of the hearing I reserved my decision.
28. In reaching my decision, I have taken into consideration all the evidence before me and the submissions made. I have assessed the appellants' circumstances as at the date of the hearing before me. The burden is on the appellants to prove, on the balance of probabilities, that they are dependent on the EEA sponsor for their essential living needs.
29. The evidence before me was that the appellants' sole source of income, other than from remittances, is the first appellant's pension of PKR11,078 per month which is equivalent to around £60 per month at the time of the hearing. The pension payment is shown in the first appellant's bank statements. The same bank statements also show that the pension payments are withdrawn in full each month. The appellants were taken by surprise with the submission that there was no evidence regarding a pension fund or the ability to draw down a lump sum. However, there is no evidence to suggest that a government pension in Pakistan would have these features.
30. There is no dispute that the sponsors send regular remittances to the appellants and have been doing so for well over two years. I note the ECO's concerns regarding the sponsors' ability to support the appellants, however there was reliable evidence in the form of P60's and payslips showing that the sponsors' joint income is close to £2,000 per month after tax. I therefore accept that they are able to sponsor the appellants to the tune of around the two hundred pounds plus a month sent via Western Union.
31. The appellants' previous rent was PKR7,000 per month and has increased to PKR15,000 per month. According to the receipts and bills enclosed in the appellants' bundle their other expenses come to around a further PKR40,000 (£217) per month. Contrary to the submissions on behalf of the respondent, a link was provided to the Numbeo website which provides figures for living costs for various countries, including Pakistan. No criticism was made of this source by Ms Willocks-Briscoe. Having examined the website, I could see no reason not to attach some weight to its data. Numbeo indicates that average rents in Pakistan outside of cities are between PKR11,000 and PKR 25,000, depending on the size of the property. The appellants' current rent does not appear extravagant in comparison. The tenancy agreement for the new accommodation was enclosed in the Rule 15(2A) bundle along with an affidavit from the landlord stating that the appellants were obliged to pay the

electricity and gas bills. There was no criticism of that evidence and I could see no reason to reject it. The Numbeo weblink estimates that basic utilities cost around PKR8,000 per month. The appellants' expenditure on utilities at their previous house was a little less than this sum. The appellants' remaining expenditure is on food, medicines and clothing. Receipts for these items have been provided. In particular, I note that PKR7612 (£41) was spent on food for the month for them both. The weblink recommends a budget of PKR 12,000 (£65) per person on food per month.

32. In view of the reliable evidence of the appellants' income, rent and other expenses, it is obvious that the pension income of PKR11,000 per month is insufficient to meet their rent of PKR15,000 per month, let alone their other expenses. I have carefully considered the findings in Lim, however there is no evidence that the appellants have access to savings, a retirement fund and property like the claimant in that case. It is apparent from the bank statements that the appellants spend all their income as soon as its paid in and that they are reliant on the remittances from abroad to meet the majority of their essential needs. On balance, I am satisfied that the appellants are dependent upon the sponsor and meet the requirements of Regulations 7 and 12 of the 2016 Regulations.

### Conclusions

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

I set aside the decision to be re-made.

I substitute a decision allowing the appeal on the basis that the appellants met the requirements of the Immigration (European Economic Area) Regulations 2016.

### **TO THE RESPONDENT** **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 25 March 2019

Upper Tribunal Judge Kamara