



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

Appeal Number: EA/03554/2019 (P)

THE IMMIGRATION ACTS

**Decision made without a
hearing under rule 34**

**Decision & Reasons Promulgated
On 20th November 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

GHULAM FATIMA

Appellant

and

ENTRY CLEARANCE OFFICER (SHEFFIELD)

Respondent

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 06 June 2019 to refuse to issue a family permit as the family member of an EEA national.
2. First-tier Tribunal Judge Parkes dismissed the appeal in a decision promulgated on 21 February 2020. The Upper Tribunal concluded that the decision involved the making of an error of law in a decision promulgated on 01 September 2020 (annexed). Unfortunately, the respondent was not able to make submissions on remaking at the hearing held in the Upper Tribunal on 29 July 2020 because Mr Melvin did not have a copy of the appellant's up to date bundle. The parties agreed that, subject to any further submissions relating to the mode of hearing, it was likely that the decision could be remade without a further hearing.

3. The appellant filed written submissions and a copy of the bundle on 06 August 2020. On behalf of the respondent, Mr Melvin filed written submissions on 24 September 2020 in the following terms:

“Having carefully considered the bundles of evidence submitted by the solicitors the Respondent is content for the Upper Tribunal to proceed to remake the decision without the need for an oral hearing or further oral or written submissions.

The Respondent accepts that the sponsor has been providing financial support for all family members in Pakistan. (It appears that both the sponsor’s wife and daughter have been granted entry clearance and they resided at the same address as this appellant)

Whilst there is still no evidence, outside of that provided in the form of the affidavits of the appellant and other family members, to explain how the money remitted by the sponsor covers the essential needs of this appellant the Respondent acknowledges the difficulties in providing such evidence in these specific circumstances.

The Respondent does not concede this appeal but understands that the Upper Tribunal may conclude that enough evidence has been provided for the appeal to succeed.

If that is the outcome it is unlikely that the Respondent will challenge that conclusion.”

4. The First-tier Tribunal finding that the EEA sponsor provides financial support to his mother in Pakistan is preserved and in any event is accepted by the respondent. The only outstanding issue is whether the appellant is a dependent direct relative in the ascending line and is therefore a ‘family member’ of a Union citizen for the purpose of Article 3(1) of the Citizens’ Directive (2004/38/EC) and Regulation 7 of The Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations 2016”). A person is dependent within the meaning of European law if the support is necessary to meet her basic needs: see *Lim v ECO (Manila)* [2016] Imm AR 421.

5. I am satisfied that the evidence shows on the balance of probability that the appellant is dependent on the EEA sponsor for her basic needs. There is no evidence to suggest any material change in the appellant’s circumstances since I made the following findings in the error of law decision:

“6. At the date of the First-tier Tribunal hearing the appellant was a 75-year-old woman who lived in a joint family household with the sponsor’s wife and child in a rural village in Pakistan. The appellant’s evidence, the sponsor’s evidence, her daughter’s evidence and that of her son-in-law, was that she was dependent upon the sponsor’s financial support for her basic needs. The appellant produced a more detailed statement in support of the appeal, which she signed with a thumb print, indicating a lack of literacy. Her evidence was that her husband died many years ago and that she has been dependent upon her son since then. She did not receive financial support from any other source. Her daughter lived with her husband in a separate home and did not

work. They would not be expected to support her. The appellant said that she rarely travels outside the rural village where she has lived all her life. She does not have a bank account because the nearest bank is about an hour away. Her son transfers money to her son-in-law, Ghulam Abbas, who brings her cash to pay for her daily expenses.

7. Their evidence was consistent with cultural norms in Pakistan. The appellant is a widow, not of working age, and is seemingly illiterate. It is still common for women to be financially dependent upon male family members in Pakistan. It is common for elderly family members to live in a joint family household. It is common for family members who live abroad, and particularly the eldest son, to send remittances to support elderly members. It is consistent with daily life in a rural village that the appellant would use cash and is unlikely to be able to produce detailed documentary evidence of her expenses.”
6. The sponsor says that his father’s shop was sold after his death. There is nothing inherently implausible about his account if there were no other family members to run the business. It is consistent with cultural norms for the eldest son to take responsibility for supporting his mother. She is not of working age and there is no evidence to suggest that she has any other source of income. The evidence of various family members has been consistent in saying that she lives in the family home with her son’s wife and child. Despite having been granted a family permit it seems that the sponsor’s wife and child remain in Pakistan to support his mother. She forms an integral part of the sponsor’s family unit. I am satisfied that the evidence shows that she is likely to be dependent on the EEA sponsor and his family for financial and emotional support. The respondent does not concede the appeal but goes so far as to suggest that the Upper Tribunal may conclude “that enough evidence has been provided for the appeal to succeed.” The respondent does not submit that the appeal should be dismissed.
7. For the reasons given above I am satisfied that the appellant is a dependent family member in the ascending line and that she is a ‘family member’ within the meaning of Article 2(2)(d) and Article 3(1) of the Citizens’ Directive and Regulation 7(1)(c) of the EEA Regulations 2016.
8. I conclude that the decision to refuse to issue a family permit recognising a right of residence as the ‘family member’ of a Union citizen breaches the appellant’s rights under the EU Treaties in respect of entry into or residence in the United Kingdom.

DECISION

The appeal is ALLOWED under the EEA Regulations 2016

Signed M. Canavan Date 16 November 2020
Upper Tribunal Judge Canavan

[ANNEX]



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: EA/03554/2019 (V)

THE IMMIGRATION ACTS

**Remote hearing heard at
Field House 29 July 2020**

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

GHULAM FATIMA

Appellant

and

ENTRY CLEARANCE OFFICER (SHEFFIELD)

Respondent

Representation:

For the appellant: Mr O. Sobowale, instructed by Morgan Wiseman Solicitors
For the respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 06 June 2019 to refuse to issue a family permit as the family member of an EEA national.
2. First-tier Tribunal Judge Parkes ("the judge") dismissed the appeal in a decision promulgated on 21 February 2020. The judge commented on the way in which the evidence was presented [13] and outlined aspects of the evidence that supported the sponsor's claim to send remittances to his family in Pakistan via his cousin/brother-in-law [15]. He noted that there

was no evidence of the appellant's expenditure or financial needs even though the issue was raised as a concern in the decision letter [17]. The judge concluded:

- “18. The gaps notwithstanding there is sufficient evidence to show that the Sponsor sends money to his mother in Pakistan and that it is received by Ghulam Abbas. The affidavit from Gulam Abbas, in addition to being silent on the precise relationships involved, does not indicate whether or not he provides any form of assistance. With his being described as the Sponsor's brother that would imply a family connection and obligation to assist.
19. What the evidence does not show is whether his mother depends on the funds the Sponsor sends for her daily needs. The evidence was that his father owned a shop, it is not clear what happened to that and there is no evidence to show whether it was sold and whether or not it is now rented out.
20. Taking all of the above into account while there is evidence that some support is provided by the Sponsor to the Appellant the evidence does not show that she is dependent on him as required by the EEA Regulations. In those circumstances the appeal cannot succeed.”

3. The appellant appealed the First-tier Tribunal decision. The grounds are unparticularised and tend towards general submissions, but the following points can be discerned:
 - (i) The fact that the judge referred to the appellant as Indian when she is from Pakistan indicated a lack of care and scrutiny of the evidence.
 - (ii) The judge failed to make any findings relating to the oral evidence given by the appellant's son (the sponsor). Both the appellant and the sponsor confirmed that the appellant is reliant on the sponsor's support to meet her essential needs. The appellant's dependency on her son is consistent with cultural norms.
 - (iii) It was unreasonable to expect the appellant, a 75-year-old woman who lives in a rural village in Pakistan, to document her daily expenses in the way expected by the judge.
4. First-tier Tribunal Judge Simpson granted permission to appeal to the Upper Tribunal in an order sent on 29 May 2020.
5. A face to face hearing was not held because it was not practicable due to public health measures put in place to control the spread of Covid-19. The appeal was heard by way of a remote hearing by Skype for Business with the parties' consent. All issues could be determined in a remote hearing. The documents before the Upper Tribunal include those that were before the First-tier Tribunal (i) the respondent's bundle; (ii) the appellant's bundle; (iii) statement of the appellant; (iv) remittance receipts; and (iv) a skeleton argument on behalf of the appellant. Mr Melvin did not have copies of many of the papers. He confirmed that he had enough documents to proceed with the error of law hearing and was content to do so.

Decision and reasons

6. At the date of the First-tier Tribunal hearing the appellant was a 75-year-old woman who lived in a joint family household with the sponsor's wife and child in a rural village in Pakistan. The appellant's evidence, the sponsor's evidence, her daughter's evidence and that of her son-in-law, was that she was dependent upon the sponsor's financial support for her basic needs. The appellant produced a more detailed statement in support of the appeal, which she signed with a thumb print, indicating a lack of literacy. Her evidence was that her husband died many years ago and that she has been dependent upon her son since then. She did not receive financial support from any other source. Her daughter lived with her husband in a separate home and did not work. They would not be expected to support her. The appellant said that she rarely travels outside the rural village where she has lived all her life. She does not have a bank account because the nearest bank is about an hour away. Her son transfers money to her son-in-law, Ghulam Abbas, who brings her cash to pay for her daily expenses.
7. Their evidence was consistent with cultural norms in Pakistan. The appellant is a widow, not of working age, and is seemingly illiterate. It is still common for women to be financially dependent upon male family members in Pakistan. It is common for elderly family members to live in a joint family household. It is common for family members who live abroad, and particularly the eldest son, to send remittances to support elderly members. It is consistent with daily life in a rural village that the appellant would use cash and is unlikely to be able to produce detailed documentary evidence of her expenses.
8. The judge accepted that there was sufficient evidence to show that the sponsor sends remittance to his mother via his cousin/brother-in-law in Pakistan. However, he was not satisfied that there was enough evidence to show that she relied on this income for her basic needs. The judge failed to consider whether the appellant's explanation for being unable to document her daily expenses was reasonable in the context of rural life in Pakistan. The judge failed to make any findings as to whether he accepted the sponsor's evidence (as well as the other consistent testimonies) that the appellant was wholly financially dependent on her son. There is no requirement for all evidence to be in documentary form; oral evidence is still evidence. Having noted the sponsor's evidence at the hearing, that his father used to own a shop, the judge suggested at [19] that this might be an alternative source of income. If this was a concern, fairness demanded that the issues should have been clarified with the sponsor during the hearing, but it was not. I was told that the sponsor's oral evidence was that his father's shop was sold after his death.
9. For these reasons, I conclude that the First-tier Tribunal failed to take into account relevant considerations, failed to make findings on material

matters and failed to provide a fair opportunity for the sponsor to address a key area of concern. The First-tier Tribunal decision involved the making of an error on a point of law. The finding relating to the sponsor's provision of financial support is preserved but the conclusion is set aside. It is appropriate to remake the decision in the Upper Tribunal. The only issue for determination is whether the appellant is dependent on the financial support from the sponsor to meet her basic needs.

10. If Mr Melvin had the relevant papers it would have been possible to hear submissions and to remake the decision, but in the circumstances, it is necessary to prolong the proceedings to allow time for the respondent to consider the evidence, and what is said in this decision, before making submissions. Both parties agreed that it would be possible to remake the decision by way of written submissions.

Directions

1. **The appellant** shall file on the Upper Tribunal and serve on the respondent an electronic copy of the evidence relied upon and written submissions relating to remaking by Friday 07 August 2020.
2. **The respondent** shall file written submissions by Friday 21 August 2020.
3. **The appellant** shall file any response by Friday 28 August 2020.
4. **The Upper Tribunal** will consider the written submissions, and subject to any submissions made about the mode of hearing, shall then decide the case without a hearing.
5. Liberty to apply.

DECISION

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

The decision will be remade by the Upper Tribunal without a hearing

Signed M. Canavan Date 30 July 2019
Upper Tribunal Judge Canavan