



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

**Appeal Numbers: EA/01106/2020
EA/01102/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2021**

**Decision & Reasons
Promulgated
On 20 December 2021**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**HASAN MUSTAFA
SAJJAD HAIDER
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellants: Mr A A Gondal, Legal Representative, Berkshire Law Chamber

For the Respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants appeal against a decision of Judge of the First-tier Tribunal Head ('the Judge') to dismiss their appeals against a decision of the respondent refusing to issue them with an EEA family permit as extended family members of an EEA national.

2. By a decision dated 9 July 2021 Judge of the First-tier Tribunal Rhys-Davies granted both appellants permission to appeal.
3. I allowed the appellants' appeals at the conclusion of the hearing, to the extent of setting aside the decision of the Judge and remitting the appeals in their entirety to the First-tier Tribunal. I now give my reasons.

Background

4. The appellants are citizens of Pakistan. They are siblings. The first appellant is aged 29. The second appellant is aged 18. They appeal against decisions of the respondent dated 23 and 30 December 2019 to refuse to issue them with EEA family permits as extended family members of an EEA national. The sponsor is their Romanian national sister-in-law, who is married to their elder brother.
5. The appellants applied for EEA family permits along with their parents, who were successful in their applications. The respondent did not accept that the appellants were dependent upon their Romanian sister-in-law, in part observing that they had failed to provide any evidence or explanation as to their current living arrangements. The respondent was not satisfied that the appellants had provided sufficient and suitable evidence regarding their own financial situation and in the absence of such evidence was not satisfied that dependency had been established.
6. The appeal came before the Judge sitting at Hatton Cross on 30 April 2021. The appellants' sponsor attended the hearing and gave evidence.

Grounds of Appeal

7. The appellants rely upon one ground of appeal running just over a page, which places reliance upon the failure of the Judge to have sufficiently in mind the respondent's acceptance that their parents were dependent upon an EU national. Criticism was also raised as to the Judge's consideration of the parents' dependency in light of the Court of Appeal judgment in *Siew Lian Lim v. Entry Clearance Officer* [2015] EWCA Civ 1383, [2016] Imm. A.R. 421 where it was held that in determining whether a family member is a 'dependent direct relative' for the purposes of (now) the Immigration (European Economic Area) Regulations 2016 the critical question is whether they are in fact in a position to support themselves.
8. In granting permission to appeal Judge Rhys-Davies observed inter alia:
 - '2. The Grounds rely on the single point that the Appellants' parents, who applied for EEA Family Permits at the same time as the Appellants, were successful in their applications. It is argued that the Respondent must have accepted that the parents were dependent on the Sponsor, so it must follow that the Appellants were also dependent, and that the Judge was wrong to hold otherwise.

3. There is merit in the Grounds. It is arguable that the Judge, in an otherwise detailed and careful Decision, erred by failing to take account of the grant of a Family Permit to the Appellants' parents, and of the implications thereof in respect of the Appellants' own claimed dependency. This is arguably a stronger point for the Appellant Sajjad Haider, who was only 17 at the date of the appeal, but the two appeals are plainly closely linked in fact and law, and it is appropriate to grant permission for both Appellants.'
9. The respondent filed a Rule 24 response authored by Mr Avery, Senior Presenting Officer. It was said that the Judge directed herself appropriately and while it was accepted that at the time of the application and the hearing the second appellant was aged under 18, the first appellant was an adult who had obtained a degree in business administration in 2019. It was asserted that:

'... The Judge was fully aware that the application of the appellants' parents had been successful and took that into account. It was for the appellants to show that they were dependent on the EEA sponsor and in paras 31 to 37 the Judge gave sound reasons for finding that they had not discharged the burden.'

Decision on Error of Law

10. Mr Walker relied upon the Rule 24 response and sought with skill to persuade me that I could read into the Judge's reasoning that the respondent's acceptance of the parents' dependency upon their daughter-in-law was properly weighed in the assessment of the appellants' dependency. However, I am satisfied that it is not possible to either expressly or implicitly identify judicial consideration being given to this fact in the assessment of dependency undertaken at paragraphs 31 to 38 of the decision:

'31. It is for the appellants to demonstrate a genuine dependency upon their sponsor. Having consider all the evidence presented I consider a number of matters have not been satisfactorily addressed. I also bear in mind what I consider to be material lacunas in the evidence. I thus have little difficulty in finding that the appellants have not made out their claim, I reach this conclusion for the following reasons.

32. I find there are serious unresolved issues in the evidence presented. The statements and affidavits lack individual details, the majority of the contents are replicated in the other statements. They fail to indicate the individual circumstance and financial requirements of either appellant. The appellants have further failed to provide a schedule indicating their incomings and outgoings to support their claim to be dependent upon their sister-in-law for their essential needs.

33. I have considered the documents referred to as 'receipts for food clothes miscellaneous', I note the invoices for various products and the various untranslated receipts in both appellant bundles.

However, I find that these have very limited evidential value. They do not indicate who they are in relation to. Despite different 'invoices' being submitted on behalf of each appellant, conversely, they all state that they relate to one individual; 'Customer No 3'. Even taken at their highest, these invoices fail to reveal the appellants' monthly income and expenditure.

34. I find that there is no evidence of how the second appellant's school fees are paid, who by and how much they amount to. Further, there is documentary evidence of when the rent, utility and phone bills are paid and by whom.
 35. When considering the evidence on the whole, I find that the remittances provided are of limited value. I do not accept that these limited remittances demonstrate that the appellants are dependent upon the sponsor at all, let alone for their essential living costs.
 36. Bank statements from the sponsor and the appellants' father would have assisted. In the absence of this, detailed evidence from the appellants, might have assisted in clarifying the financial position of both appellants, however, this was not provided, despite the decision letters making it clear that such evidence was lacking.
 37. I find that the evidence provided does not satisfactorily addresses [sic] the appellants' claims to be dependent on the sponsor for their essential needs. I find the total dearth of reliable evidence as to the appellants' finances to be very troubling indeed. The appellants have failed to adequately set out their financial situation. They could have explained, which they have not, why they have not provided schedules of income and expenditure, there is no evidence as to their regular outgoings and incomings and as such, there is insufficient evidence from the appellants and the sponsor to address the above issues. I am satisfied that the evidence of the sponsor did not assist to resolve the issues. I conclude that the appellants' actual income, outgoings and financial circumstances have not been satisfactorily evidenced.
 38. Thus, I conclude, that the evidence provided falls materially short of establishing the appellants' financial history, their current financial circumstances and crucially, their dependency upon the sponsor.'
11. Whilst the Judge gave very careful consideration to the documentary evidence before her and properly observed the poor state of the evidence, it is clear to me that in this matter consideration should properly have been given to whether weight could be placed upon the respondent's acceptance that the parents were dependent upon their daughter-in-law when assessing as to whether the appellants, in particular the minor child, were also dependants. The substance of any weight to be given is a judicial decision, but the fact that the parents were accepted to be dependent upon their EU citizen daughter-in-law cannot be ignored.

12. I am satisfied that such failure is an error of law. It is a matter for whoever hears this appeal at the resumed hearing to consider whether there is a lack of evidence presented as to the personal circumstances of the appellants, including, *inter alia*, whether they are dependent upon their sponsor; where they are accommodated; who paid for their school and university fees; and whether the elder child has cogently explained how, after several years, he has been unable to find work despite having a degree in business administration. However, I cannot conclude that these appeals enjoy no merits. In those circumstances I am satisfied that the error of law was material.
13. The only proper course of action available to me is to set aside the decision of the First-tier Tribunal in its entirety.

Remaking the Decision

14. I am satisfied that it is in the interests of justice to remit the hearing of the appellants' appeals to the First-tier Tribunal at Hatton Cross. I do so because I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal

Notice of Decision

15. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 18 May 2021.
16. No findings of fact are preserved.
17. The resumed hearing in this matter is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard by any judge other than Judge of the First-tier Tribunal Head.
18. No anonymity direction is made.

Signed: D O'Callaghan
2021

Date: 10 December

Upper Tribunal Judge O'Callaghan