



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

Appeal Number: EA/01845/2020

THE IMMIGRATION ACTS

Heard at Field House

On 29 October 2021

**Decision & Reasons
Promulgated**

On 03 December 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**CHERIF KOUIDER EL OUAHED
(ANONYMITY DIRECTION NOTE MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Anifowoshe, Counsel instructed by Elkettas & Associates Solicitors

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a national of Algeria against a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State to refuse him a residence card as the dependent extended family member of an EEA national exercising treaty rights.
2. The law is not in dispute. It is accepted that if the appellant had been able to show that, when he was in Algeria, he was dependent on money sent from his EEA national relative the appeal should succeed. The difficulty he faces is that he failed to establish before the First-tier Tribunal that he was dependent on money from the EEA national are required.

3. The appellant's case is quite straightforward. He said he was sent money regularly, sometimes by Western Union transfer, sometimes by visitors, and that he needed that money.
4. We know he was saying he needed the money because we have his statement and it is quite plain at paragraph 4 of his statement dated 6 April 2021 that he claimed he had been dependent on his sponsor since 2011, the sponsor used to give him money in cash when he visited Algeria and with that money he was "able to meet my basic needs". Unhelpfully, there has been no attempt in the evidence to expand that assertion into something which could be tested and analysed to see if the appellant's idea of his basic needs were the same as the law's idea of basic needs, assuming of course that he was telling the truth.
5. It is not doubted that money was transferred but the First-tier Tribunal Judge was not satisfied that it was transferred in the regular way that would have been necessary to be consistent with the appellant's case that he was "sponsored" since 2011. Mr Lindsay argues that this omission is fatal to the appeal because anything that was said further was addressed to the alternative contention about how the money was used rather than if it was sent. The appellant had failed to prove that the money was paid on a regular basis since 2011 and that finding was not challenged. This point was not raised in the Respondent's Rule 24 Notice but, on reflection, I find that Mr Lindsay's submission was sound. In order to succeed the Appellant needed to, but did not, challenge the finding that money was not sent regularly.
6. However, it was made perfectly plain that it was challenged that the judge should not have concluded that the money was not needed for basic needs. The difficulty the appellant faces there is the judge's conclusion is based closely on what the appellant said. It was described as money to buy cigarettes, buy clothes, like pocket money and the same phrase was echoed by a Mrs Cherid, who gave evidence. Now, it is argued that this was a misunderstanding and "like pocket money" did not really mean very much and the money was needed to buy clothes, which are essentials. I am not going to be persuaded easily that cigarettes were necessary but that is a different point, and it was certainly the appellant's case that the money also was used for his transport to school. It might have been but as far as I can see, there was no evidence at all that that was necessary for those purposes. It just was not explained. The appellant had said it was "like pocket money" and the judge clearly took the view that money was sent from time to time, it was very welcome and it made life a little bit easier but it was not money that was necessary.
7. I have to remind myself that I am not presently a primary factfinder. My function is to see if the First-tier Tribunal has given adequate reasons in law for the decision that it has reached and I am driven to the conclusion that the First-tier Tribunal Judge did.
8. It is very sad if there was a fundamental misunderstanding. I am not saying that there was but I am entirely satisfied that the judge analysed the evidence and reached a conclusion that was consistent with the evidence that was given to him and if that evidence is not really what the appellant meant, that is not an error of law on the part of the judge.

9. The essential problem here is the very poor witness statement that did so little to explain where the money went.
10. I have listened to Counsel's submissions. I am concerned about what she says but I am wholly unpersuaded that there was an error of law for the reasons I have given and I dismiss this appeal.

11. Notice of Decision

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 26 November 2021