



IAC-AH-V1

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

Appeal Number: EA/03510/2019

**THE IMMIGRATION ACTS**

**Heard at Field House (Remotely)  
On: 22 June 2021**

**Decision & Reasons Promulgated  
On: 30 June 2021**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**MRS SANGEETA MALHOTRA CHANDER KANTA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr A Rahman, consultant, Jaswal Johnstone LLP  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision an Entry Clearance Officer (ECO) refusing to issue the appellant with an EEA Family Permit as the dependent relative of her son who is married to a Polish national (the EEA sponsor).

### Anonymity

2. No application for anonymity was made and there appears to be no obvious reason why anonymity should be directed.

### The decision under appeal

3. On 21 June 2019, the ECO refused the appellant's application for an EEA Family Permit. The reasons given were that the money transfer remittances which were submitted dated from immediately prior to the application and there was no evidence of the appellant's family circumstances including her financial position which would prove that her essential living needs could not be met without the financial support of the sponsor.

### The decision of the First-tier Tribunal

4. The appellant's appeal was dismissed by the First-tier Tribunal in a decision promulgated on 15 May 2020. That decision was set aside by the Upper Tribunal, on the papers, in a decision promulgated on 11 December 2020, with a direction that the matter be remade in the Upper Tribunal. None of the previous findings were preserved.

### The hearing

5. The appellant's son, Mr Anuj Malhotra was the sole witness. He was examined and cross-examined thoroughly by the representatives. I made a note of Mr Malhotra's evidence and the submissions made in my record of proceedings and have taken them into consideration in determining this matter. Consequently, I will not rehearse the evidence and submissions except where it is relevant to my findings.

### Decision and Reasons

6. The relevant legal provision in this case is Regulation 7 of the Immigration (EEA) Regulations 2016 which treats as a "family member" the "dependent direct relatives" in the ascending line of an EEA national who is a qualified person, or that of their spouse or civil partner. If the requirements of the Regulations are met, Regulation 12 states that an EEA Family Permit "must" be issued. The sole issue before me was whether the appellant was dependent upon the EEA national.
7. I found Mr Malhotra to be a witness of truth. His testimony was detailed, given without evasion and was broadly consistent with the other evidence before me. Indeed, Mr Whitwell did not seek to argue that there were issues with the witness's credibility, the emphasis of his submissions being on the absence of supporting documentary evidence. While I note that the documentary evidence had not been updated since the earlier appeal, this was owing to the solicitor's decision not to seek permission to adduce further evidence in the Upper Tribunal rather than any omission on the part of the sponsors.

8. I accept that the EEA sponsor's financial support of the appellant commenced following the death of the latter's husband in May 2017 and continued to date. Mr Malhotra's evidence was that his wife brought cash to India during two of her visits to India. I accept as plausible the explanation he gave as to why there is no documentary evidence of the exchange of pounds to rupees, that being that informal money changers were used. Furthermore, I am prepared to accept Mr Malhotra's explanation that he wrongly used the term "sent" instead of "gave" regarding how his wife transferred funds to him during her visits and that this was, in essence, a slip of the tongue. After Mr Malhotra joined his wife in the UK, funds were indeed sent by him and his wife to the appellant by Western Union. Mr Malhotra and his wife are now parents to a daughter and are both still employed, and I accept Mr Malhotra's account that he and his wife continue to send varying amounts of funds to the appellant.
9. Mr Whitwell submitted that the appellant had referred to receiving a variable income in the visa application form but this accords with Mr Malhotra's account of the appellant's outgoings being dependent upon whether she had to pay for medical treatment in any particular month. It is also the case that the Western Union remittances are of varying amounts. There is no inconsistency in the evidence here.
10. The ECO was concerned that the remittances commenced only from December 2018 however this is consistent with Mr Malhotra's evidence that the appellant did not require financial support while her husband was still alive because the latter continued to work until he passed away. In addition, Mr Malhotra was living with his mother until he arrived in the UK in 2018 and during that time his wife contributed funds in person during visits and he was working in India. I therefore do not accept that there was a need for evidence of substantial remittances over a prolonged period of time as the ECO contended.
11. There is no evidence to support the submission that the appellant has other sources of income. It was not disputed that Mr Malhotra was the only son, that remittances of varying amounts had been made by Western Union, that the appellant is widowed and had never worked. Mr Malhotra credibly explained why his late father's savings had run out, with reference to the dowries of his three sisters and bills for cancer treatment. The evidence before me was that the appellant's late husband was a self-employed accountant paid in cash who kept his savings in cash. The explanation that the appellant's husband had no pension as a self-employed person is plausible. I accept that other than the modest family home, the appellant has no assets or savings and is dependent on money sent by the EEA sponsor and Mr Malhotra for her material support.
12. I am bound by the judgment in *Lim* [2015] EWCA Civ 1383 where it was held that it was not enough to show that the financial support was in fact provided by the EEA national to a family member but that the family member must need that support in order to meet their basic needs. Mr Malhotra's evidence was that the funds sent by him and his wife were used to pay for food, medical bills and utility bills. I find that

the funds sent are required for the appellant's essential needs, with the exception of accommodation.

13. I have carefully considered Mr Whitwell's submission that the appellant could sell the family home which Mr Malhotra believed was worth £12-13,000, however she would still require accommodation and there was no evidence before me to show that the sale proceeds would support her for very long as she would then need to pay rent. In any event, it is not necessary for an EEA sponsor to meet the appellant's every need in order for the appellant to be considered a dependent relative under the Regulations.
14. I accept that there exists a situation of real dependency between the appellant and sponsors in that the appellant is in need of their material support. Although it is legally irrelevant why the appellant is dependent, it is easily explained by her widowhood and the absence of savings. There is no evidence before me to suggest that the appellant could support herself without the sponsors' financial support. Nor was there any evidence that the appellant could obtain material support from her married daughters. Mr Malhotra explained that his family are a traditional Punjabi family where it is a son's responsibility to look after parents whereas married sisters had responsibility for their husbands and children. Furthermore, I heard that none of his sisters worked and therefore had no money of their own to contribute. While I accept Mr Whitwell's submission as to the paucity of supporting evidence, but this is a case where the evidence never existed because the appellant's husband did not use a bank account, he was never employed or in receipt of a pension and no records are kept of informal money exchanges. I find that the absence of evidence in this case does not undermine the clear, consistent and plausible evidence of Mr Malhotra.
15. I conclude, on balance, that the appellant has made out her case to be a dependent family member of an EEA national in line with regulation 7 of the 2016 Regulations and that she is entitled to an EEA Family Permit under regulation 12.

### **Notice of Decision**

The appeal is allowed under the EEA Regulations.

No anonymity direction is made.

Signed:

Date 23 June 2021

Upper Tribunal Judge Kamara

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

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

Signed:

Date: 23 June 2021

Upper Tribunal Judge Kamara

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email