



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06328/2019

**THE IMMIGRATION ACTS**

Heard remotely at Field House via video (Teams)  
On 19 October 2021

Decision & Reasons Promulgated  
On 16 November 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MUHAMMAD NAZAR MOHY UD DIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the appellant: Mr D Akhtar, solicitor of Wright Justice Solicitors

For the respondent: Ms H Aboni, Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Microsoft Teams. A face-to-face hearing was not held due to precautions against the spread of the Corona-19 pandemic and because all issues could be determined in a remote hearing.

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Fowell (the judge) who, in a decision promulgated on 24 March 2021, dismissed the appellant's appeal against the decision of the Entry Clearance Officer ("the respondent" or "ECO") dated 28 October 2019 refusing to issue the appellant an EEA Family Permit as an extended family member of an EEA national.

## **Background**

2. The appellant is a national of Pakistan, born on 23 March 1988. He applied for an EEA Family Permit based on his relationship with Mr Khizar Nawaz, his maternal uncle. The application was refused as the respondent was not satisfied that the appellant was either dependent on Mr Nawaz or a member of Mr Nawaz's household.
3. The appellant appealed the respondent's decision pursuant to regulation 36 of the Immigration (European Economic Area) Regulations 2016.

## **The decision of the First-tier Tribunal**

4. The judge had before him a bundle of documents prepared by the respondent containing, inter alia, financial documents relating to Mr Nawaz and money transfer records. Bundles of documents provided by the appellant included, inter alia, further money transfer receipts, records relating to the property in Pakistan belonging to Mr Nawaz and in which the appellant now lived, and a local affidavit that the appellant and his family lived in Mr Nawaz's house. Additionally, there were some photographs showing Mr Nawaz's house, a supporting statement from Mr Nawaz, electricity bills indicating that Mr Nawaz paid for the appellant and his family's consumption of electricity, and translated Pakistani ID cards relating to the appellant and his mother confirming their residence in the property owned by Mr Nawaz. A further bundle of documents contained, inter alia, letters from Maqsood Hussain and Chaudhry Safdar Mehfooz detailing money given to them by Mr Nawaz which they took to Pakistan in 2017 and 2018 and gave to the appellant and his family in Mr Nawaz's property. The judge heard oral evidence from the sponsor. The judge heard evidence to the effect that the appellant had never worked, that he had no source of income and no assets or savings.
5. Having summarised the parties' submissions, the judge set out his conclusions at [23] to [32]. The judge noted that there was no evidence from the appellant himself, and, although he accepted the appellant's submissions that he did not have to show reasons for his dependency, the dependency itself still had to be established as fact. The judge noted the absence of evidence that, despite having obtained a Master's degree, the appellant had been unable to find any work. In the absence of such evidence, and in the absence of other evidence such as bank statements and details of their outgoings, the judge was not satisfied that a clear picture of the appellant's family's finances has been established. The judge

referred to Lim [2015] EWCA Civ 1383 when noting the need for real dependency. The judge was not satisfied there was sufficient evidence to cast light on the family finances to support a finding that the appellant was financially dependent on Mr Nawaz.

6. At [29] the judge found the account given by Mr Nawaz relating to his ownership of the property in Pakistan, occupied by the appellant and his family, to be credible, and that this evidence was supported by the letters from Maqsood Hussain and Chaudhry Safdar Mehfooz, the ownership papers, and the family records supporting Mr Nawaz's account that he was the only son of his parents and that he would consequently inherit their property. The judge found it credible that Mr Nawaz would wish to support his sister and her family (including the appellant) by allowing them to live in his property.
7. At [30] the judge accepted that the appellant was provided with accommodation and that this accommodation met his (and his family's) material needs. The judge however found that "a roof over their heads is only one need" and that it did not overcome the gap in the evidence regarding their finances. The judge concluded that the money sent by Mr Nawaz was "top up" money and that the appellant did not meet the test for financial dependency.
8. At [31] the judge found that the appellant and Mr Nawaz had never shared a house after he became an EEA national and he was not satisfied that Mr Nawaz's visits to Pakistan, when he stayed with the appellant and his family, constituted the appellant being a member of Mr Nawaz's household. The appeal was dismissed.

### **The challenge to the judge's decision**

9. The grounds contend that the judge failed to consider evidence from the appellant and his sponsor relevant to establishing financial dependency, that the judge misdirected himself in concluding that the appellant was not a member of Mr Nawaz's household, and that the judge misdirected himself by focusing on the appellant's circumstances in Pakistan rather than whether Mr Nawaz was funding the appellant's essential needs.
10. Upper Tribunal Judge Grubb found that the grounds were largely unarguable, save for one aspect of the third ground.

However, in para 30 the judge accepted that the house in which the appellant lives belongs to the sponsor and is meeting, inter alia, one the appellant's "essential needs". The judge considered this was not enough to establish dependency upon the sponsor if the appellant was not also financial [*sic*] dependent. This is arguably wrong. If the provision of free accommodation is to met [*sic*] an "essential need" of the appellant, then that alone arguably establishes dependency for the purposes of the EEA Regulations. It is indirect financial dependency. The point is raised in Ground 3(v)(c) and is arguable.

11. Judge Grubb refused permission in respect of the remaining grounds.
12. Shortly before the 'error of law' hearing the appellant applied for an adjournment on the basis that he lodged a judicial review challenge to the Upper Tribunal's refusal to grant permission to appeal on the other grounds. Having only had sight of the documents provided by the appellant I refused the adjournment in light of the decision in EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 00117 (IAC). Applying the principles established in EH there was not before me, when I refused the adjournment, any evidence that a formal direction had been issued limiting the grounds that could be argued, and the entirety of the Grounds of Appeal could be argued. Subsequent to my decision I was made aware that, in fact, Upper Tribunal Judge Gill had issued directions limiting the grounds of appeal. The appellant's representatives attended the hearing in reliance on my decision refusing the adjournment. I explained the course of events to Ms Aboni and drew her attention to the 3<sup>rd</sup> headnote of EH which indicated that any direction limiting the grounds was capable of being amended, suspended or set aside under rule 5(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Ms Aboni helpfully indicated that she had no objection to my setting aside the direction of Judge Gill in all the circumstances.
13. Mr Akhtar adopted the entirety of the grounds of appeal. He submitted that the judge, having found that Mr Nawaz to be a credible witness in respect of his evidence relating to his ownership of his house in Pakistan and the residence within that house by the appellant and his mother, the judge was not entitled to disregard Mr Akhtar's evidence concerning the appellant's inability to find employment or his financial reliance on funds remitted by Mr Nawaz. Mr Akhtar submitted that a roof over one's head was a necessity of life and the roof had been provided by the sponsor. Ms Aboni submitted that the judge directed himself appropriately and gave adequate reasons for his decision.

## Discussion

14. It is apparent from even a brief consideration of the jurisprudence relating to dependency in the context of EEA decisions that dependency can take the form of income or living expenses, or in the form of accommodation (see, by way of example, Oboh & Ors v SSHD [2013] EWCA Civ 1525, at [55], Bigia v Entry Clearance Officer [2009] EWCA Civ 79, at [43]). The judge found that Mr Nawaz owned the property in which the appellant and his mother resided in Pakistan, and that Mr Nawaz allowed the appellant and his mother to live in that property. There was no suggestion that the appellant or his mother were paying for the property. This was a conclusion rationally open to the judge on the evidence before him and for the reasons given. This aspect of the judge's decision has not been challenged by the respondent. The judge also found that

the provision of accommodation by Mr Nawaz met the material needs of the appellant (and his mother).

15. The judge found that the money remitted by Mr Nawaz to the appellant was 'top up' money which was not sufficient, in the absence of evidence from the appellant himself, to demonstrate financial dependency, particularly given the appellant's qualifications and the absence of evidence that he had been unable to find employment. The provision of accommodation that, on the judge's own finding, met the appellant's material needs, was however clear evidence, in the context of the 'top up' money being provided and Mr Nawaz's own evidence of his knowledge of the appellant's circumstances, that, regardless of the reasons for dependency, there was in fact dependency. I take judicial notice that accommodation will usually be an important and expensive element of a person's life. Mr Nawaz was providing free accommodation for the appellant and his mother. This was necessary to meet their "material needs", and, in my judgment, it was consequently necessary to meet their essential needs. Dependency, on the facts of this case, had been established and the judge's conclusion to the contrary was none not open to him on a proper application of the relevant legal principles. I find that the decision must be set aside. On the basis of the judge's factual findings, I remake the decision allowing the appeal on the basis that the appellant is dependent on Mr Nawaz to meet his essential needs.

### **Notice of Decision**

**The making of the First-tier Tribunal's decision involved the making of an error on a point of law requiring it to be set aside.**

**I remake the decision, allowing the appellant's appeal.**

Signed *D. Blum*

Date: 25 October 2021

Upper Tribunal Judge Blum