



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

Appeal Number: UI-2021-001485
(EA/00854/2021)

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 7 July 2022**

**Decision & Reasons Promulgated
On 9 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SHABANA KAUSAR
(Anonymity direction not made)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Kannangara instructed by Justmount & Co Solicitors
For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant, a citizen of Pakistan born on 3 November 1993, appealed a decision of an Entry Clearance Officer (ECO) to refuse her application for an EEA family permit her to join her father-in-law, an Italian national, who resides in the United Kingdom as an extended family member.

2. Her appeal was considered by First-tier Tribunal Judge Fenoughty ('the Judge') who do determination promulgated on the 23 November 2021 dismissed the appeal.
3. The Judge accepted that the appellant is the sponsor's daughter-in-law and that they lived at the same address in Italy in October 2019 from where the sponsor came to the UK, and that she was part of his household up to that date.
4. The Judge also finds that the evidence included a number of remittances and evidence that the sponsor and his nine family members lived at the specified address in Italy. The Judge however finds the total sums did not appear to add up to more than €4000 for a 19 month period with their being not being more than €900 paid to the appellant before the date of the application. It was also noted there was no schedule of payments and some of the documents appeared to relate to the same payments.
5. The Judge was not satisfied that although there was evidence of payments to the appellant before her, and since the application, that did not, without more, show dependency within the meaning of the Immigration (EEA) Regulations 2016 ('the Regulations'). The appeal was therefore dismissed.
6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:
 3. At paragraph 43 of the decision the judge found that the Appellant had prior membership of the Sponsor's household up to October 2019 when he moved to the UK. At paragraph 35 of the decision the judge accepted that the Sponsor had made payments to the applicant and the other family members from time to time between February 2020 September 2021. There is therefore an argument for present dependency. Under the case of Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC) the Applicant only needs to satisfy one of the four ways outlined in that decision. At paragraph 38 the judge found that the evidence is insufficient to prove financial dependents on the Sponsor at the time the Applicant made her application in October 2020. It is arguable that in the context of this appeal that should not count against the Applicant as the relevant date for considering all the evidence is the date of the hearing and the applicant had already satisfy the test of prior membership of the household. I accept that all the grounds are arguable and leave is therefore granted.
7. In her Rule 24 response dated the 24 February 2022 the Secretary of State's representative writes:
 2. The respondent opposes the Appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
 3. As pointed out in the grant of permission and in the grounds, the FFTJ found that the appellant as part of large household previous lived with sponsor prior to his moving to the UK in October 2019. Since that point the appellant sought to prove dependency via money transfer/financial dependents.

4. The FTTJ clearly outlines that there is limited evidence of financial remittances between February 2020 in September 2021 [32], to a household of nine persons. Importantly there is an absence of evidence in relation to those persons [35], the overall financial situation of those living within that household [38], or indeed any evidence from the appellant herself [26] for her husband (the sponsor's son) [26] as to their financial situation. Such information being relevant to an assessment as to whether they relied on the sponsor to meet their essential needs (Lim, EWCA 2015 applied). Without such evidence, it was open to the FTT to conclude on the evidence before the Tribunal that dependency had not been established at the relevant date. J

Error of law

8. Regulation 8 of the EEA Regulations 2016 reads:

“Extended family member”

8. (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1) (a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).
 - (2) The condition in this paragraph is that the person is—
 - (a) a relative of an EEA national; and
 - (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either— (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.
 - (3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA national.
 - (4) The condition in this paragraph is that the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national.
 - (5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national, and is able to prove this to the decision maker.
 - (6) In these Regulations, “relevant EEA national” means, in relation to an extended family member— (a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related; (b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.
 - (7) In paragraphs (2) and (3), “relative of an EEA national” includes a relative of the spouse or civil partner of an EEA national where on the basis of being an extended family member a person— (a) has prior to the 1st February 2017 been issued with— (i) an EEA family permit; (ii) a

registration certificate; or (iii) a residence card; and (b) has since the most recent issue of a document satisfying sub-paragraph (a) been continuously resident in the United Kingdom.

9. In relation to the applicable test, the Court of Appeals recently handed down its decision in *Shawinder Singh v Secretary of State for the Home Department* [2022] EWCA Civ 1054. In giving the lead judgement to which the other members of the Court Agreed Lord Justice Birss stated:

17. The timing and meaning of 'dependency' in Article 3 of the Directive has been before the Court of Justice of the European Union (CJEU). In *Rahman* [2012] CJEU Case-83/11, the Grand Chamber ruled on the former, holding that:

"35. ... the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent".

18. *Jia v Migrationsverket* [2007] CJEU Case C-1/05 examined the meaning of that 'dependence' under the Directive's predecessor (Directive 73/148/EEC) and held that the term means that material support is needed to meet the applicant's 'essential needs' in their state of origin, or in the state from which they had come at the time when they applied to join the EU national. The evidence required to show such dependency does not need to take any prescribed form:

"43. ... Proof of the need for material support may be adduced by any appropriate means, while a mere undertaking from the Community national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family members' situation of real dependence."

19. In this jurisdiction the Court of Appeal in *ECO Manilla v Lim* [2015] EWCA 1383 held that dependency will not be established simply by providing financial support to a family member who can support themselves. Similar observations were made in *SM (India) v ECO (Mumbai)* [2009] EWCA Civ 1426, where this court said that:

"24. ... the fact some financial provision was made and that [the applicants] were accommodated in the family home would not be sufficient in themselves to establish dependency for the purposes of the Directive."

20. As I explained above, the present appeal concerns the FTT's decision that the appellant had failed to prove his dependency on his sponsor regarding his essential needs, including his education.

21. Finally, on the nature of the question the court has to answer when assessing these matters, I refer to two short passages, starting with the judgment of Lord Justice Sullivan in *SM (India) v ECO (Mumbai)* as follows:

"28. In reality, people's circumstances, their lives and their lifestyles are not always quite so straightforward, and any attempt to draw a bright line between determining whether an applicant has a need for material support to meet his

"essential needs" and where there is recourse to support, it being unnecessary to determine the reasons for that recourse, is best considered not on the basis of hypothetical examples but on a case-by-case basis, with the benefit of clear and sufficient factual findings by the AIT."

22. This reflects the CJEU's words in **Rahman**:
- "23. It is incumbent upon the competent authority, when undertaking that examination of the applicant's personal circumstances, to take account of the various factors that may be relevant in the particular case."
10. The Judge, in the determination under challenge, set out findings of fact from [29] making specific reference to the case of Dauhoo. It is not made at the Judge adopted an impermissible approach when assessing the issues in this appeal.
11. From [34] the Judge wrote:
34. The respondent had raised the issue of insufficiency of evidence in the refusal letter. Although there is now more information, there is still a lack of evidence of the extent to which the sponsor has financially supported the appellant, and the extent to which, if at all, she, her husband, and their other family members were able to support themselves. I accept that, whilst the appellant had lived in the house in Italy which was rented by the sponsor, she would have formed part of his household. As she shared the house with eight other people, some of the outgoings would have been common. The sponsor says that none of the people in the house are working, and they are all dependent upon him. The sums required to support nine dependence are highly likely to have been considerably higher than the sums which appear to have been sent to them. However, there is no indication of the outgoings of the whole family, or that element which is attributable to the appellant.
35. I accept that the sponsor has made payments to the appellant and other family members from time to time in February 2020 and September 2021. However, there is no evidence of any monies sent between October 2019, when the appellant said he came to the UK, and February 2020, when the first payment was made. There is no evidence of the manner in which the monies were divided between the family members in Italy, who all appear to be dependent upon the sponsor.
36. The sponsor has not provided any statements for his UK bank account, save a "mini statement" which only covers a short period, and does not show any monies paid out. His Italian bank statements do not support the appellant's claim to be financially dependent upon him. The remittances have clearly been made from the sponsors TSB account, and there is no evidence, for example by bank statements, have any additional payments made to which the evidence has not been submitted.
37. There is no evidence of the sponsor's income before January 2020 or after September 2020, and no evidence that he actually pays the rent for the Italian property as well as the outgoings on his UK property.

There is no evidence from the appellant, or any of the family members save for the sponsor.

38. On the limited evidence before me, I cannot calculate whether the support provided by the sponsor met the essential living needs of the appellant, or simply supplemented the income otherwise available to her. There is no evidence at all any income which her husband has earned in the past, or any income derived from any other family members. I do not consider the available evidence of payments to be sufficient to demonstrate real dependence. Although the sponsor has sent monies to the appellant, I find that the evidence is insufficient to prove financial dependence on the sponsor at the time she made her application in October 2020.
12. Later in the judgement at [43 -46] the Judge writes:
43. I accept that the appellant was part of the sponsor's household up to October 2019, when he moved to the UK, but she has not been part of his household since then. Accordingly, to satisfy the definition of "extended family member" the appellant had to show that she was dependent upon the sponsor.
 44. As to the time dependency must be shown, in **Rahman [2013] QB 249 (C-83/11)** the Court considered Article 3(2)(a) of the "Citizens Directive" 2004/38/EC, which is implemented by the 2016 regulations. It said, at paragraph 33 "*... the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the Union citizen on whom he is dependent.*"
 45. Although there is evidence of payments to the appellant, before and since her application, I find that this does not, without more, show dependency, within the meaning of the Regulations.
 46. In view of the lack of information provided by the appellant to show that she is dependent upon the sponsor, I am not satisfied that she has shown that she meets the definition of an "extended family member". I therefore find it was reasonable for the respondent to refuse an application for an EEA Family Permit as she did not meet all the requirements of Regulation 12.
13. In the grounds of appeal the appellant asserts the Judge erred in law by failing to consider all the evidence which included evidence that the sponsor and his son were also travelling to Italy and taking money with them, a finding there was no evidence of the sponsor's income may contradict the fact the respondent did not dispute the sponsor was a qualified person who has pre-settled status in the UK, asserts the Judge's findings are wrong as the appellant was not working and her only source of income was the support given by the sponsor, that all documents related to the sponsors financial position where in the bundle, and that the grant to the appellant's husband as a dependent child of the sponsor over the age of 21 who applied for pre-settled status under the EU Settlement Scheme demonstrated inconsistency in the respondent's approach by giving the appellant's husband and son the right to live in the United Kingdom and only refusing her application.

14. I do not find it made out the Judge failed to identify the correct applicable law, failed to properly understand the relevant burden and standard of proof, or failed to assess the evidence. I find the Judge came to appropriate conclusions on the matters the tribunal was asked to consider. The appellant has failed to establish that Judge's findings are irrational or contrary to the evidence and were plainly open to the Judge on the facts of this appeal.
15. In relation to the appellant's husband and son's position, as Mr Williams noted, these were not applications similar to that made by the appellant under appeal but applications under made under the EU Settlement Scheme where the only requirement upon the sponsor was to show that he was present in the United Kingdom. There was no requirement for him to demonstrate dependency or provide evidence of means. The fact other family members may have been granted a particular relief under a separate legal regime does not establish legal error in the decision of the Judge when considering regulation 8 of the 2016 regulations.
16. The Judge does not challenge the fact that sponsor is an EEA national but that is not determinative of the point raised by the Judge which was total lack of evidence of the sponsor's financial situation.
17. I do not accept the Judge failed to properly take the evidence into account. Evidential issues were identified in the refusal notice and so the appellant was aware of the concerns that had been expressed in relation to the same. Whilst Mr Kannangara submitted that all the evidence had been provided and that the appellant should not have been expected to do more, the Judge clearly disagreed. The burden was upon the appellant to establish an entitlement to the remedy she sought, namely the issue of a residence card as an extended family member. She failed to do so.
18. It is not made out the Judge placed inappropriate or irrational weight upon the evidence and clearly took into account the appellant's case and arguments as a reading of the determination shows. The submission made that the Judge had failed to give due weight to that evidence is, in reality, no more than disagreement with the conclusions the Judge reached.
19. Dependency has to be continuous as the wording of the regulations shows and it was not made out the appellant remained a member of the sponsor's household after he left Italy.
20. The issue identified by the Judge is relatively straightforward, namely that there was insufficient evidence to prove dependency, no evidence of bank statements or to show the sponsors financial position, and no evidence from the appellant's husband or any other family member. The Judge was therefore left to consider the material that had been provided which was found to be insufficient.
21. The submission that appellant and her husband was not working and that somebody must be supporting the family, which Mr Kannangara submitted there must be the sponsor, is noted, but the Judge was clearly not satisfied that such a claim has been established on the

evidence. The Judge does not dispute that that was the claim but does not accept that it was proved.

22. I find the appellant fails to establish arguable legal error material to the decision to dismiss the appeal on the facts of this case. Accordingly it is not appropriate for Upper Tribunal to interfere any further in relation to this matter. The appeal is dismissed.

Decision

23. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

24. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated 28 July 2022