



**Upper Tribunal
(Immigration and Asylum Chamber)
003362**

Appeal Number: UI-2022-

EA/01521/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2022**

**Decision & Reasons
Promulgated
On 6 November 2022**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
& DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

**SAMIR MAACHOU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr J Dhanji, counsel, direct access

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Khurram promulgated on 10 June 2022, which dismissed the Appellant's appeal against the respondent's decision to refuse to grant a family permit under the Immigration (EEA) Regulations 2016.

Background

3. The Appellant was born on 23 August 1999. He is an Algerian national who applied for an EEA family permit as the extended family member of his aunt, a French national who has been granted indefinite leave to remain in the UK.

4. On 11 November 2020 the appellant (together with his sister and his grandmother) made an application to join the appellant's aunt in the UK. The appellant's aunt (the EEA national) is a French citizen who was granted indefinite leave to remain in the UK under appendix EU to the immigration rules on 4 May 2019. On 22 January 2021 the respondent refused the appellant's application.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Khurram ("the Judge") dismissed the appeal against the Respondent's decision,

6. Grounds of appeal were lodged by the appellant and on 11 July 2022 Judge Parkes gave permission to appeal stating inter alia

2. ... It is argued that the Judge erred in finding that he was not dependent on the Sponsor and failed to make material findings on the provision of cash and other support directly and the Second Appellant's mental health issues and ability to work

3. ... it is arguable that the Judge did not adequately address the circumstances and the evidence in support.

The Hearing

7. At the outset Mr Dhanji told us that on 22nd September 2022 an appeal on behalf of the sister (whose appeal was linked to that of the appellant) had been filed. We were not in possession of the application and Mr Dhanji accepted, on that basis, our declination to consider that appeal at the hearing before us.

8. For the respondent, Mr Dhanji moved the grounds of appeal. Mr Dhanji told us that there are two grounds of appeal and explained that he would argue that the Judge had failed to make findings on material matters, and separately at [58] of his decision the judge did not properly make evidence based findings about dependency.

9. Mr Dhanji took us to [56] of the decision and told us that there the Judge summarises the evidence that the appellant relies on. At [56 (vi)] the

Judge narrates that there is medical evidence that the appellant suffers from a mental illness but, he said, the Judge does not make any findings about the extent of disability caused by mental illness. Mr Dhanji told us that such a finding was necessary to establish whether or not the appellant could support himself without assistance from the sponsor. At [58] the Judge accepts that the appellant lives in accommodation owned by the sponsor.

10. Mr Dhanji conceded that there was no evidence of the appellant's expenses placed before the First-tier Tribunal, but he argued that the accepted fact that the appellant lives in accommodation owned by the EEA national is evidence of a critical need provided for by the EEA national, and so evidence that the appellant depends on the contribution of the EEA national. Mr Dhanji emphasised that there was evidence before the first-tier tribunal that the EEA national regularly visits the appellant in Algeria, that she had provided him with cash when she visited him. Mr Dhanji told us there was documentary evidence that the EEA national had sent a number of parcels to the appellant and his family in Algeria.

11. Mr Dhanji told us that the second ground of appeal relates entirely to [58] of the decision. There, he said, the Judge found that the EEA national owns the property that the appellant lives in. Relying on Singh v SSHD EWCA Civ 1054, Mr Dhanji said that the finding about ownership of the appellant's accommodation should be determinative of this case in the appellant's favour. He argued that accommodation is one single essential need which is so significant that it leads to the conclusion that the appellant is dependent on the EEA national.

12. Ms Ahmed opposed the appeal. She took us to [57] of the decision and told us that the Judge considered all of the evidence. Ms Ahmed told us that the absence of a finding about the disabling nature of the appellant's mental illness is neutral. She argued that disability does not equate to dependency for essential needs. She told us that the Judge's findings at [58] to [64] of the decision are adequate to support the Judge's final conclusion.

13. Ms Ahmed drew our attention to [58] of the decision and said that there the Judge finds that it is the paucity of evidence which leads the Judge to the conclusion that the appellant cannot establish financial dependency. At [60] the Judge bemoans the absence of evidence of the appellant's expenses.

14. Turning to the appellant's second ground of appeal, Ms Ahmed took us to [18] of the decision and told us that the Judge's finding was not that the appellant lives in accommodation provided by the sponsor of necessity. She relied on page 9 of version 7 of the respondent's policy guidance on Free Movement Rights of Extended Family Members, and said that evidence of dependency is normally provided by evidence of money transfers, so that the arrangements for the appellant's accommodation

are not determinative of the appeal. Ms Ahmed invited us to dismiss the appeal.

Analysis

15. Having considered the appeals for the appellants grandmother (allowed) and sister, (dismissed) the Judge considered the appellant's appeal between [48] and [62] of the decision. Between [48] and [51] the Judge gives reasons for finding that the EEA national is a qualified person in terms of regulation 6 of the 2016 Regulations. Between [51] and [53] the Judge considers the degree of relationship between the EEA national and the appellant. The Judge then turns to consideration of financial dependency.

16. At [56] the Judge lists the documentary evidence placed before him. Between [57] and [60] the Judge gives detailed reasons for finding that there is inadequate evidence of financial dependency. At [58] the Judge records that the EEA national says that she has supported the appellant since birth, and balances that assertion against a lack of evidence. The appellant's position is that financial contribution is made by the EEA national diverting income from one of her rental properties to the appellant and his family. At [59] the Judge explains why he cannot rely on that evidence.

17. It is at [60] of the decision that the Judge plainly explains that he could not make findings of fact which might favour the appellant because the necessary evidential material for those findings was not placed before him.

18. What is argued for the appellant is that the finding that his accommodation is owned by the EEA national is evidence of an essential need being met by the contribution of the EEA national. It is also argued that because the appellant suffers from mental illness, the importance of the provision of accommodation is enhanced.

19. The question of dependency was considered in Singh v Secretary of State for the Home Department [2022] EWCA Civ 1054, in which it was held that the court can take either singular issue or global issue approach to establishing dependency, and that the court should approach dependency on a case-by-case basis making careful evidence-based findings of fact.

20. It is useful to quote paragraphs 18 to 21 of Singh v Secretary of State for the Home Department [2022] EWCA Civ 1054

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 Civ 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."

21. In this appellant's case, the appellant claims that his mental illness leaves him requiring "Total social support", but the evidence that is produced rests almost entirely on the provision of accommodation. A fair assessment of this appellant's appeal requires a global assessment. A fair reading of the Judge's decision indicates that the Judge was unable to carry out a global assessment because of the paucity of evidence.

22. The Judge accurately sets out the documentary evidence produced at [56] of the decision. Between [58] and [60] of the decision the Judge explains why the evidence produced is inadequate.

23. What the appellant cannot avoid is that before the First-tier Tribunal he gave an incomplete picture of his circumstances. Counsel for the appellant concedes that there is no evidence of the appellant's expenditure. A glance at the bundle of evidence produced before the First-tier tribunal reveals that the evidence of financial dependency relates almost entirely to the EEA national's ownership of heritable property. The evidence of the appellant's "general dependency" is incomplete evidence

of the appellant's mental health problems, together with evidence of the EEA national's visits to Algeria between August 2015 and October 2021, and evidence that the EEA national sent some parcels to the appellant's family.

24. The documentary evidence produced by the appellant only gives an incomplete view of the appellant's circumstances. No coherent breakdown of the appellant's income and outgoings is produced. It is not possible to link the appellant's necessary expenditure to the provision of accommodation and the evidence of periodic financial contribution by the EEA national and the sending of packages (the contents of which was not apparently disclosed).

25. It is not enough to show a financial contribution has been made. The appellant has to show dependency. The appellant coyly declines to give a candid disclosure of his circumstances.

26. The Judge sets out perfectly good reasoning for his findings of fact. The Judge carefully analysed the evidence, and then took the correct guidance in law before reaching a decision well within the range of decisions available to the Judge.

27. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.

28. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

29. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

30. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 10 June 2022, stands.

signed **Paul Doyle**

Date 27 September 2022

Deputy Upper Tribunal Judge Doyle

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.