



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

Appeal Number: UI-2022-001272  
EA/02689/2021

**THE IMMIGRATION ACTS**

**Heard at Phoenix House, Bradford  
On the 22<sup>nd</sup> September 2022**

**Decision and Reasons  
Promulgated  
On the 6<sup>th</sup> November 2022**

**Before**

**UPPER TRIBUNAL JUDGE LANE  
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**MUHAMMAD ZAHID  
(ANONYMITY NOT DIRECTED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation:**

For the Appellant: Mr Hingora, Counsel instructed by Adam Bernard Solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

*Introduction*

- 1.** The appellant appeals against the decision of the First-tier Tribunal, promulgated on the 27<sup>th</sup> May 2022, to dismiss his appeal against the refusal of his application for an EEA Family Permit in order to join his brother, Waheed Muhammad Rasheed Hussain (hereafter, “the sponsor”).

### *The issues before the First-tier Tribunal*

- 2.** It was not disputed that the appellant and sponsor are brothers or that the sponsor is a Spanish national who, at all material times, was exercising European Union treaty rights in the United Kingdom. Neither was it disputed that the sponsor had been providing financial support to the appellant for some years prior to the date of application. The issue before the Tribunal was whether it had been proved that the appellant was dependent upon that support in order to meet his essential living costs. \_

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

- 3.** The core of Tribunal's reasoning is contained in paragraphs 20 and 21 of its decision:

**20.** I have had some difficulty being able to properly assess the financial circumstances of the appellant. There are a number of family members, in Pakistan, in the UK and Spain who it is said are not providing financial support to the appellant. I have not received any evidence by way of either statements or oral evidence to confirm this is the case. This is evidence that could have been easily given and it was not. I also note that the appellant's father is said to be paying his utilities. Again there was no evidence of this. It also caused me to question how the appellant's father was in a position to pay utilities as well. There was I remind myself it is for the appellant to demonstrate that he is not in a position to support himself. 21.

**21.** In conclusion the appellant has not discharged the burden upon him to the required standard to show that he is dependent upon the sponsor.

### *The grounds of appeal*

- 4.** There are two grounds of appeal. Firstly, it is said that given (amongst other things) that the appellant was unrepresented, the Tribunal ought to have adjourned the hearing of its own volition in order to afford him an opportunity to obtain further evidence. Secondly, it is said that the Tribunal failed to give adequate reasons for its "finding" that the appellant was not in a position to support himself.

### *Analysis*

- 5.** We begin by noting that there was a degree of mutual contradiction in the grounds as they were presented at the hearing before us. Thus, it was argued on the one hand that the Tribunal ought to have adjourned the hearing in order to allow the appellant to fill the gaps in the evidence (ground 1) whilst on the other hand arguing that the Tribunal had erred in not accepting the adequacy of the evidence that was already before it (ground 2). We shall nevertheless consider the grounds in turn.
- 6.** Mr Hingora argued that there were three factors that, taken in combination, meant the Tribunal ought, as a matter of fairness, to have adjourned the hearing of its own volition. In no particular order of importance, those factors were, (i) the appellant was unrepresented, (ii) the Tribunal was clearly aware that there were gaps in the evidence, and (iii) this was the appellant's last opportunity to obtain settlement in the United

Kingdom given that the route under which he had applied is now closed. We reject that submission. This was not an appeal that engaged the appellant's fundamental human rights with a consequent right to receive public funding for legal advice and representation. It was thus a matter for the appellant to decide whether to obtain legal advice and/or representation on a private basis. The effect of the appellant's argument to the contrary is that it was incumbent upon the Tribunal not only to advise him of the deficiencies in his evidence, but also to adjourn the hearing in order to allow him to address them. We are in no doubt that there was no such obligation upon the Tribunal in this case. Rather, the Tribunal's obligation was limited to ensuring that the appellant was able effectively to present the evidence upon which he had chosen to rely.

7. Insofar as the second ground seeks to argue that the Tribunal failed to provide adequate reasons for its "finding" that the appellant was unable to support himself (to quote from the original grounds of appeal), we consider that it is misconceived. The Tribunal made no such finding. It merely concluded that the appellant had failed to discharge the burden of proving the positive averment.
8. In granting permission to appeal, Upper Tribunal Blum slightly recast this ground by stating that it was arguable that the First-tier Tribunal had erred in failing to explain why the assertions made by the appellant and the sponsor in their evidence were insufficient to discharge the burden of proof. We also reject this argument. Subject to the application of the correct standard, the adequacy of the evidence necessary to discharge the burden of proof is a matter for the Tribunal to assess in all the circumstances of the individual case. It will only be necessary to make a reasoned finding concerning the credibility of the evidence if that evidence is expressly challenged on this ground by the opposing party, in which case it becomes a discrete issue in the appeal. There was no such challenge in this case. It did not follow from this, however, that the Tribunal was bound to accept at face value every unsubstantiated assertion made by the appellant and the sponsor, especially where the accuracy of such assertion was critical to the outcome of the application and/or the appeal against its refusal.
9. We are accordingly satisfied that it was reasonably open to the Tribunal to conclude that mere assertion by the appellant and the sponsor - unsupported as it was by evidence from other family members and (in the case of the appellant's father) documentary evidence of him discharging utility bills - was insufficient in the circumstances to discharge the burden of proving that the appellant was dependent upon the sponsor for his essential needs.

### **Notice of Decision**

The appeal is dismissed.

Signed: David Kelly  
September 2022

Date: 25<sup>th</sup>

Deputy Judge of the Upper Tribunal