



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

**Appeal Number: EA/02720/2021  
(UI-2021-001566)**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On the 19 July 2022**

**Decision & Reasons Promulgated  
On the 07 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**IRFAN AHMED**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: The Sponsor (in person)

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Pakistan, appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EEA family permit to enter the UK as the extended family member of the sponsor, his sister Yasmeen Akhtar, under the Immigration (European Economic Area) Regulations 2016.

2. The appellant's application for an EEA Family Permit was refused by the respondent on 19 December 2020 on the grounds that he had failed to provide adequate evidence to demonstrate that he was financially dependent upon the

sponsor. The respondent was not satisfied that the requirements of Regulation 12 of the EEA Regulations 2016 were met.

3. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Farrelly on 13 October 2021. The sponsor was not in attendance at the hearing. The judge noted that the sponsor had requested an adjournment by email the previous day, stating that she had moved from Scotland to Nelson, England in May 2021 and had not received any correspondence from the Tribunal advising her of the hearing date. She stated that she had only become aware of the hearing date on 11 October 2021 and was currently unwell. The judge noted that the sponsor had been sent a video link and advice how to log on but had not availed herself of the opportunity of engaging via video link. He refused to adjourn the proceedings and decided to continue with the hearing in the sponsor's absence. He accepted the relationship between the appellant and the sponsor, noting that that had not been challenged by the respondent, but he did not accept that dependency had been established by the evidence. He therefore dismissed the appeal.

4. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the sponsor had only been notified of the hearing on 11 October 2021 and was unable to travel from Nelson in England, to where she had moved, to the hearing in Glasgow, owing to ill-health. She had tried to log on remotely but had been unable to connect. In any event she had not had sufficient time to prepare for the hearing.

5. Permission to appeal was granted in the First-tier Tribunal on 7 February 2022.

6. The matter was then listed for hearing and came before me. The sponsor was in attendance, together with a family friend. The sponsor required an interpreter, but had not made the Tribunal aware of that in time for the hearing. Mr Diwnycz advised me that he was not resisting the grounds in any event and was content for the judge's decision to be set aside and the matter remitted for a fresh hearing, in the interests of justice. Assistance was helpfully provided by a third party to explain the decision to the sponsor in her language, advising her that she would be notified of a new hearing date in the First-tier Tribunal in due course and to ensure that she attended that hearing.

7. In light of Mr Diwnycz's helpful concession, it is not necessary for me to make any findings or to provide any reasons for my decision. As agreed by Mr Diwnycz, Judge Farrelly's decision is set aside on fairness grounds, in order to provide the sponsor with an opportunity to attend a hearing before the First-tier Tribunal and give oral evidence in support of the appellant's appeal.

## **DECISION**

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to

the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Farrelly.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Dated: 19 July 2022