



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/02820/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 28 February 2022**

**Decision & Reasons Promulgated
On the 29 March 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KALASH ASHRAF
[NO ANONYMITY ORDER]**

Respondent

DECISION AND REASONS

1. The Secretary of State appeals with permission from the decision of the First-tier Tribunal allowing the claimant's appeal against her decision to refuse him leave to enter the UK on the basis that he is the dependant family member of an EEA citizen exercising (then) Treaty rights in the UK under the Immigration (European Economic Area) Regulations 2016. The claimant is a Pakistani citizen.
2. Neither the claimant nor the sponsor are in the UK and the claimant has consented to this appeal being dealt with on the papers, as was the appeal to the First-tier Tribunal.
3. **Mode of hearing.** Neither the claimant nor the sponsor are in the UK and the claimant has consented to this appeal being dealt with on the papers,

as was the appeal to the First-tier Tribunal. The claimant does not have UK legal representation.

Permission to appeal

4. The First-tier Judge noted that the sponsor was an EU nation living in Italy and found that the claimant was dependant on him. The Secretary of State appealed, arguing that the First-tier Judge had not applied Regulation 12 of the 2016 Regulations: for the issue of an EEA family permit, the EEA national needed to be resident in the UK in accordance with the Regulations.
5. Permission to appeal was granted on that basis, and also on the basis that the First-tier Judge had arguably erred in assessing dependency.

Directions

6. There followed various directions orders. On 29 October 2021, Upper Tribunal Judge Keith asked the parties to indicate whether there was any objection to the appeal being heard on the papers. Neither party responded. On 4 December 2021, Upper Tribunal Judge Bruce directed the claimant to respond within 35 days to the Secretary of State's grounds of appeal and the grant of permission, 'setting out his position on whether the decision of Judge Lodato should be upheld or set aside'.
7. On 7 February 2022, Upper Tribunal Judge Norton-Taylor noted that the claimant had contacted the Upper Tribunal to say that he had not received the Secretary of State's grounds of appeal, and they had been sent to him by email on 11 January 2022. However, the claimant had still failed to respond to Judge Bruce's direction to set out his position.
8. Judge Norton-Taylor directed the claimant to say whether he agreed to his case being decided on the papers, by 15 February 2022 at the latest, and to send written arguments about why the Secretary of State's appeal should not succeed, by 25 February 2022.
9. On 23 February 2022, the claimant responded. He said that the sponsor, an Italian national, was now settled in the UK and was willing to support him here once he arrived. He said that describing his uncle as a cousin in some of the papers was a simple typographical error and that it ought to have been clear overall that he was a paternal uncle. He observed that the Secretary of State had only challenged his dependency on the sponsor, not the relationship or whether the sponsor was in the UK.
10. The claimant attached evidence that his sponsor had moved to the UK, including proof of pre-settlement, National Insurance number, bank statement, tenancy agreement and utility bills. The evidence of dependency provided was sufficient to sustain the decision of the First-tier Tribunal and the claimant had opened a personal bank account in March 2020, the statements of which he now submitted, to show that he was

unemployed and had no other source of income apart from the sponsor's remittances.

11. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal consideration

12. I note that the decision of the Secretary of State was based on the facts as they were at 21 February 2020. The evidence produced by the claimant consists of:

- (i) a tenancy agreement entered into by the sponsor in the UK, with effect from 1 February 2020;
- (ii) a job offer for the sponsor dated 20 September 2021;
- (iii) notification of the sponsor's pre-settled status dated 16 March 2021, which says in terms that it is '**not proof of your status**' and cannot be used to prove your status to others';
- (iv) issue of a National Insurance number on 7 September 2021;
- (v) a sponsorship declaration dated 8 January 2020 by the sponsor that he is 'EU national and resident inside the Italy' intending to 'accompany the above-named applicant in UK as my EEA dependent family member' and that he is 'able and willing to sponsor, maintain and accommodate [the claimant] during his visit to UK in a suitable accommodation';
- (vi) evidence that the claimant is not economically active in Pakistan;
- (vii) copies of various invoices for the purchase of clothes and groceries;
- (viii) bank statements which begin at 1 March 2020 and so postdate the decision under challenge;
- (ix) a significant number of international transfers from the sponsor to the claimant from Italy, and a number from the UK, only two of which predate the respondent's decision, and which were made when on his own account, the sponsor was 'resident inside the Italy'; and
- (x) some medical records, the significance of which is not immediately clear to me.

13. On the basis of these documents, no reasonable judge could have concluded that the uncle (or cousin) sponsoring the claimant was resident in the UK, still less in accordance with the 2016 Regulations, at the date of decision. That finding is fatal to this appeal.

DECISION

14. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Signed [Judith AJC Gleeson](#)
2022

Date: 28 February

Upper Tribunal Judge Gleeson