



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

Appeal Number: EA/02863/2020

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 21 December 2021**

**Decision & Reasons  
Promulgated  
On 20 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MUHAMMAD SHAMS UI ISLAM**

Appellant

**(ANONYMITY DIRECTION NOT MADE)**

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Ahmed

For the Respondent: Ms Aboni, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan who was born on 4 June 1988. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 26 February 2020 refusing him entry clearance as the extended family member of a qualified person (his brother - the sponsor -

a Portuguese citizen). The First-tier Tribunal, in a decision promulgated on 9 June 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the First-tier Tribunal erred in law such that its decision falls to be set aside. The judge directed herself as to the correct law to be applied in the appeal, but I find her reasoning in parts of the decision to be confused and lacking in rationality.
3. First, the judge found that the sponsor sends money to the appellant in Pakistan [15]. However, in determining whether the test dependency (articulated in the Court of Appeal judgment in *Lim* [2015] EWCA Civ 1383 at [20]) has been met the judge has had regard to irrelevant matters. At [10], the judge correctly notes that there is no minimum income requirement for the sponsor in the United Kingdom and finds that 'it is not ... inherently implausible' that the sponsor remits to the appellant in Pakistan the sums which he claims notwithstanding that this may place his own family below income support levels, but then states that 'I consider this is a negative factor but of itself does not mean that the appellant and sponsor have not told the truth.' Further, at [11], the judge states that 'there is almost no evidence before me as to who and what income is supporting the mother in the United Kingdom.' The judge states that she attached negative weight to both these factors. I find the reasoning is unclear. I accept that the judge was entitled to consider the credibility of the evidence of the sponsor and that, if, for example, the payments which he claimed to make to the appellant could not be supported by the evidence, then she was entitled to dismiss the appeal. However, it is not at all clear why the judge should give negative weight to evidence of the sponsor which she found to be plausible and, indeed, not untruthful.
4. So far as the mother is concerned, I accept the assertion made in the grounds of appeal (which Ms Aboni, who appeared for the Secretary of State at the Upper Tribunal initial hearing, did not seek to contradict) that issues concerning the support of the mother were never raised at the First-tier Tribunal hearing. The judge found at [11] that, if the sponsor is also supporting his mother (who lives with him and his family) then 'this reduces his income ... even further' and, if she receives support from other family members, that would be inconsistent with evidence that those family members cannot help to support the appellant. That finding (i) appears to have been made without any of those matters having been put to the sponsor at the hearing (ii) whilst it potentially goes to the credibility of the sponsor's evidence, has no relevance to the central issue in the appeal, that is the dependency of the appellant on the sponsor (iii) ignores the possibility (which could have been addressed in oral evidence) that the mother has some income of her own which she uses for her own support. It also ignores that the fact that the appellant and sponsor had never claimed that other family members helped to support the mother.
5. There is force also in paragraph [15] of the grounds. The judge finds that, because the sponsor (in answer to the question regarding the purchase of

cotton pants shown in the documentary evidence) stated that he may have purchased the pants for his sister when she visited the United Kingdom, then this evidence is not consistent with the claim that siblings of the appellant other than the sponsor could not help to support him. It is not entirely clear but the judge appears to be saying that, if the sister had the funds to travel to the United Kingdom, then she could support the appellant. As the grounds point out, the question is whether the sponsor supports the appellant not whether others may also contribute. In any event, the circumstances of the sister's visit never appear to have been raised at the hearing. There was no sufficient base in the evidence for the judge to reach a finding that the sister, because she had visited the United Kingdom, therefore supports the appellant such that he is not dependent upon the sponsor.

6. For the reasons which I have discussed above, I find that the judge's analysis is flawed. I set aside the decision and return the appeal to the First-tier Tribunal for the decision to remade following a hearing *de novo*. None of the findings of fact of the First-tier Tribunal shall stand.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

**Listing Directions: Return to First-tier Tribunal at Bradford; First available date; None of the findings of fact shall stand; not before Judge Mensah; 1.5 hours; Face to face unless First-tier Tribunal directs otherwise; Appellant to request an interpreter, if required.**

Signed

Date 2 January 2022

Upper Tribunal Judge Lane