



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

**Appeal Number:  
EA/03324/2021, UI-2021-001622  
EA/03327/2021, UI-2021-001623  
EA/03328/2021, UI-2021-001624  
EA/03329/2021, UI-2021-001625  
EA/03330/2021, UI-2021-001626**

**THE IMMIGRATION ACTS**

**Field House  
On the 14<sup>th</sup> July 2022**

**Decision & Reasons Promulgated  
On the 12 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**DUR E NAJAF HAMDANI & OTHERS**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr W Mian, Solicitor

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are nationals of Pakistan. The first appellant is the mother of the second, third, fourth and fifth appellants. They applied for an EEA family permit as dependent extended family members of their sponsor, Mr Syed Waseem Naqvi, a Czech national. The appellants claimed that the sponsor, who is the brother of the first appellant, has resided in the UK since November 2005 and they are financially dependent on him. Their applications were refused by the respondent for reasons set out in decisions dated 10<sup>th</sup> February 2021. The appellants' appeals against the

refusal of their applications was dismissed by First-tier Tribunal Judge Hoffman (“Judge Hoffman”) for reasons set out in a decision promulgated on 1<sup>st</sup> November 2021.

2. The sponsor gave evidence at the hearing of the appeal. The findings and conclusions of Judge Hoffman are set out at paragraphs [18] to [31] of the decision. At paragraph [19] of the decision, Judge Hoffman considered the claim made by the sponsor that he is self-employed and has an annual income of £39,000 comprising of a monthly gross salary of £750 and a monthly dividend of £2,500. Judge Hoffman noted that the sponsors P60 for the tax year ending 5<sup>th</sup> April 2021 confirms that he earned £8,563.68 during that period, broadly supporting the sponsor’s claim to pay himself a salary of £750 per month. Judge Hoffman concluded, at [19], that it is difficult from the evidence before the Tribunal to confirm the sponsor’s claim that he pays himself a dividend of £2,500. He referred to a lack of evidence of such payments going into the sponsor’s bank account. At paragraph [21], Judge Hoffman said:

“On consideration of the evidence, I am not satisfied the sponsor earns as much as he claims, although, based on his savings, I do accept that he has a (*sic*) sufficient finances available to him to send money to the appellants in Pakistan on occasion.”

3. At paragraphs [23] to [31], Judge Hoffman considered whether the appellants have established that they are dependent on the sponsor for their essential living needs. The judge noted, at [23], that the test of dependency is a purely factual test that must not be reduced to a bare calculation of financial dependency. He had regard to the report provided by Dr Rana Nasir Ali Khan, a consultant psychiatrist in Lahore but concluded he could only attach limited weight to that report. Judge Hoffman was however prepared to accept, on balance, that the appellant is estranged from her husband, and this has left her with depression. Judge Hoffman considered the evidence before the Tribunal regarding

remittances sent by the sponsor to the first appellant. At paragraph [30] of the decision, Judge Hoffman referred to the first appellant's bank statements, which he noted, show a regular transfer of money into the account in US dollars. The judge said the amounts almost exactly match the appellants' monthly outgoings as given in the sponsor's witness statement. The judge said:

"... Given that the evidence of the sponsor and the first appellant (in her letter dated 11 November 2020 [AB/31]) is that the appellants have no other income than that which they receive from the sponsor, I find that these regular deposits undermine their claim. Furthermore, as these regular deposits are made in US dollars, I find that they are likely to come from Capt. Naqvi in the USA. I also note that these monthly payments appear to be more regular than the less frequent ones sent to the appellants by the sponsor given the limited number of remittance receipts provided by him."

4. At paragraph [31] Judge Hoffman concluded:

"In conclusion, I accept that the first appellant is estranged from her husband and that she is dependent on others to meet her essential living needs in Pakistan. However, having considered all of the evidence before me in the round, I find on balance of probabilities that the appellants are only dependent on the sponsor in the UK to a limited degree. Moreover, the evidence before me shows that not only do the appellants live in Capt. Naqvi's home rent-free, but he likely sends the money each month to cover the family's outgoings of approximately 48,625 rupees. I therefore find on balance of probabilities that it is Capt. Naqvi and not the sponsor who shoulders the primary responsibility for meeting the appellants' essential living needs in Lahore."

5. The appellants claim Judge Hoffman failed to have regard to the relevant authorities and it was not open to the Tribunal to dismiss the appeal on EEA grounds. It is said the judge had failed to undertake a full and careful assessment of the evidence relied upon by the appellants regarding 'dependency'. They claim the judge proceeds upon a mistake as to fact because there was evidence to establish that the regular transfer of money into the first appellant's account, made in US dollars, was made by the sponsor from his personal Lloyds Bank Account. The appellants also claim that the sponsor in his oral evidence had said that

the property known as 72-B, Sector B, Askari 11, DHA, Lahore, in which the appellants reside, is owned jointly by the sponsor and his brother Capt. Naqvi. The appellants claim Judge Hoffman misunderstood the evidence before the Tribunal in reaching the conclusion that on balance, it is Capt. Naqvi that shoulders the primary responsibility for meeting the appellants essential needs in Lahore.

6. Permission to appeal was granted by First-tier Tribunal Judge Sills on 4<sup>th</sup> January 2022. It was noted that Judge Hoffman appears to have failed to consider material evidence that was before the Tribunal relating to the sponsor's income and the payments received by the first appellant.

#### The appeal before me

7. Before me, Mr Mian submits Judge Hoffman misunderstood the evidence which shows that the payments received by the first appellant were in fact payments made by the sponsor to the first appellant, albeit the payments were credited to the first appellant bank account in US dollars. Mr Mian submits the judge accepted the money was received by the first appellant, but erred in concluding that the funds are likely to have come from Capt. Naqvi in the USA. That has had an impact on the decision because it led the judge to conclude that the claim that the appellants are dependent on the sponsor, was undermined.
8. Mr Mian drew my attention to the evidence that was before the First-tier Tribunal regarding the transfers of money from the sponsor to the first appellant. At page [112] of the appellant's bundle, there is, what appears to be confirmation from Lloyds Bank on Monday 5<sup>th</sup> April 2021 of a request made by the sponsor for the transfer of \$320.23 to the first appellant. At page [348] of the appellant's bundle, there is the first appellant's bank statement which appears to show that on 8<sup>th</sup> April 2021,

\$295.23 was credited to her account. Mr Mian submits the shortfall of \$25.00 between the money sent by the sponsor and the money credited to the first appellant's account is likely to be the charges levied by Askari Bank in relation to the transfer of funds. Similarly, at page [113] of the appellant's bundle there is evidence of a payment made by the sponsor of \$319.73 on 4<sup>th</sup> May 2021 with evidence at page [349] of the corresponding credit into the first appellant's bank account on 19<sup>th</sup> May 2021 in the sum of \$294.73. Again the shortfall of \$25.00 is likely to be the relevant charges. Mr Mian referred me to similar documents that demonstrate the other payments received into the first appellant's bank account in US dollars were, contrary to what Judge Hoffman understood, payments sent by the sponsor to the first appellant.

9. As far as the property is concerned, Mr Mian accepted that the only evidence regarding the ownership of the property in which the appellants live, was the oral evidence of the sponsor. I informed Mr Mian that contrary to what is asserted in paragraph 3(b) of the appellants' grounds of appeal, the record of proceedings establishes that the sponsor did not state in his oral evidence that the property was jointly owned by the sponsor and his brother Capt. Naqvi. The typed record of proceedings records that in re-examination, it was put to the sponsor by Mr Mian that the respondent's decisions suggest that his sister is residing in property that is not owned by him. The sponsor answered; *"Yes, it is in my brother's name. He was in the army ..."*. Mr Mian submitted that there had been no attempt to mislead the Tribunal in the grounds of appeal, and that was his understanding of the evidence.
10. Finally, Mr Mian submits Judge Hoffman failed to have regard to the evidence that was before the Tribunal regarding the sponsor's earnings. The judge said, at [19], that the sponsor's P60 for the tax year ending on 5 April 2021 confirmed the appellant earned £8563.68 during that year,

and that is consistent with his claim to pay himself a salary of £750 per month. However the judge said it is difficult from the evidence to confirm the sponsor's claim that he pays himself a monthly dividend of £2,500. He said there was no evidence of such payments going into the sponsor's bank account. Mr Mian submits that is to ignore the evidence at pages [165] and [166] of the appellant's bundle, which is the tax calculation for the relevant year and confirms that the sponsor declared earnings from employment of £8,564, and dividends for that tax year in the sum of £30,000. There was therefore evidence before the Tribunal of the sponsor having declared an income from dividends amounting to £2,500 each month to HMRC, albeit the evidence of payment of the dividends into the sponsor's bank account was limited to a payment into the sponsor' bank account of £2,500 on 1<sup>st</sup> March 2021 as evidenced at page [285] of the appellant's bundle.

11. Mr Mian submits it is clear that in reaching the decision the judge failed to have regard to the evidence before the Tribunal that supported the claims made by the appellants and sponsor. If that evidence had properly been considered, the judge may have reached a different decision.
12. In reply, Ms Cunha submits that when looking at the decision holistically, it appears the judge carefully considered the relationship between the appellant and sponsor and was entitled to conclude that the appellant's essential living needs are not met by any dependency on the sponsor. She acknowledges the judge does not appear to refer to some of the evidence that was before the Tribunal and which supported the claims being made, but she submits, that was immaterial to the outcome. She submits the judge appears to have had concerns regarding the extent to which the appellants are dependent upon others for their essential living needs.

13. There was clearly evidence before the First-tier Tribunal regarding the dividend income of the sponsor, albeit only one bank statement showing a deposit of £2,500 into the sponsor's personal account on 1<sup>st</sup> March 2021. There was evidence of the dividend income declared by the sponsor to HMRC, that the judge fails to refer to at all.
14. Equally, there was evidence before the Tribunal that the transfers into the first appellant's account, received in US dollars, are likely to have been made by the sponsor. In my judgement, Judge Hoffman erred in concluding that the regular deposits into the first appellant's account made in US dollars are likely to come from Capt. Naqvi in the USA simply because the deposits were in US dollars. There was evidence before the Tribunal to confirm that money had been sent by the sponsor to the first appellant from the UK, in US dollars.
15. I reject the claim made by Mr Mian regarding the evidence before the First-tier Tribunal regarding the ownership of the property in which the appellant's live in Pakistan. Mr Mian accepted that a party who suggests that something was said, or not said at the hearing, contrary to what appears in the judge's decision, needs to support that suggestion with evidence, if it is to be the basis of a ground of appeal; *HA (Conduct of Hearing: Evidence Required) Somalia [2009] UKAIT 00018* Mr Mian's recollection of the evidence is at odds with the judge's record of proceedings. The appellant's representatives should have been well aware that a party who was represented before the judge, when appealing on grounds that the judge failed to have regard to evidence given during the course of the hearing, as here, should file with their application a statement of truth as to the facts claimed, together with either: a) a photocopy of a contemporaneous note by their representative; or b) an explanation as to why no contemporaneous (or near-contemporaneous) note is available. The appellant's

representatives have failed to provide anything that even begins to undermine the evidence referred to in the decision, which is consistent with the record of proceedings.

16. In the end however, having been taken to the relevant documents that were before the First-tier Tribunal regarding the income of the sponsor and the monies sent by the sponsor to the first appellant, I am satisfied that the decision of the First-tier Tribunal Judge is vitiated by a material error of law and must be set aside.
17. I add that there is in my judgment little analysis of the fundamental issue that was at the heart of the appeal before the First-tier Tribunal. The test for dependency is a purely factual test that is fact specific and requires an examination of the personal circumstances of the appellants. It requires a holistic examination of several factors, including financial, physical, and social conditions and how the appellant's meet their essential living costs.
18. As to disposal, I am persuaded by the parties that the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
19. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**Notice of Decision**



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20. The appeal is allowed, and the decision of FtT Judge Hoffman promulgated on 1<sup>st</sup> November 2021 is set aside.
21. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

## **V. Mandalia**

**Upper Tribunal Judge Mandalia**

**14<sup>th</sup> July 2022**