



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

Appeal Number: UI-2021-001393  
EA/04707/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 July 2022**

**Decision & Reasons Promulgated  
On 11 August 2022**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**SADAM ALI DARWASH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mrs. H Siddique, Solicitor, Orwell Solicitors  
For the Respondent: Mrs. A Nolan, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant appeals the decision of Judge of the First-tier Tribunal Thorne, who by a decision sent to the parties on 5 August 2021 refused his appeal against a decision by the respondent to issue him with an EEA Family Permit.

### *Adjournment Request*

2. The appellant requested an adjournment prior to the hearing. Reliance was placed upon his ongoing efforts to secure a DNA report confirming his familial relationship with his sponsor. I was informed that he had booked and paid for a test with Cellmark and was awaiting a report that, unfortunately, was presently subject to delay in its preparation. After his becoming aware of the delay, the appellant booked another test with Alpha Labs, in the hope that he would secure a positive report before the hearing on 1 July 2022. However, it had not proven possible to secure a report from Alpha Labs in time; the appellant being informed that it would take a further week before the document would be sent to him.
3. The written adjournment request detailed that DNA evidence was considered 'vital' and was core to the appellant's case: 'it is upon the DNA evidence that the appellant is mainly relying upon'.
4. I refused the adjournment request in writing prior to the hearing, confirming that an explanation would be provided at the hearing. Whilst acknowledging the importance of DNA evidence in respect of ground 1 of the appellant's appeal, the issue of the appellant's relationship with the sponsor is not determinative of ground 2 of the appeal which is concerned with dependency. The securing and subsequent filing of DNA evidence by means of an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 is not determinative of the appeal.
5. In the circumstances, I informed Mrs. Siddique that I would first consider the submissions advanced by the parties in respect of ground 2, and if I was satisfied that an error of law was established, I would adjourn the hearing part-heard to permit the appellant further time in which to secure the awaited DNA evidence and to file and serve it by means of a rule 15(2A) application. Both Mrs. Siddique and Mrs. Nolan confirmed agreement with the proposed course of action.

### **Brief facts**

6. The appellant is a national of Pakistan and is presently aged 30. His sponsor, Mr. Noor Ullah, is his purported brother, and a Swedish national exercising EEA Treaty rights in the United Kingdom.
7. The appellant has provided evidence as to his school studies up until October 2010. He secured a BA degree from the University of Peshawar in October 2012 and a linguistic diploma in teaching Arabic to non-Arabic speakers in September 2014.
8. He commenced a carwash business in Pakistan from 2017 but closed the business down in 2019. He asserts that he was unable to sustain his business because he had an inadequate business plan which ultimately led to him giving up the business and 'calling it quits'.

9. By means of an application dated 21 March 2020 the appellant applied for an EEA Family Permit, stating that he was dependent upon his Swedish national brother.
10. The respondent refused the application by a decision dated 17 August 2020, observing in respect of the asserted relationship:

'As evidence of your relationship with your sponsor you have provided your birth certificate that was registered on 05/11/19 confirming that your date of birth is 01/10/92 and your sponsor's birth certificate that was registered on 05/11/19 confirming his date of birth is 01/10/92 these registration [sic] took place over 18 years after your birth and 26 years after your sponsor's birth. Due to the length of time between birth events and registration these certificates cannot be accepted as reliable evidence in the absence of other relevant birth documentation issued at the time of the event or other credible documentation evidencing your parentage.

In light of the above absence your application fails to meet the requirements of regulation 8 of the Immigration (European Economic Area) Regulations 2016 and as such falls for refusal.'

11. The respondent did not accept the appellant to be a dependent relative of his sponsor:

'On your application you state that your sponsor has resided in the UK since August 2019 and that you are financially dependent on him. As evidence of this you have provided money transfer remittance receipts from your sponsor to you.

You state that you are unemployed and dependent on your sponsor, however, checks with the Government of Pakistan have revealed that you are economically active in Pakistan and subject to income tax. Therefore, I am satisfied that you are not dependent, either wholly or partly, upon your EEA sponsor. Furthermore, this contradiction calls into question the credibility of your application overall.'

### **First-tier Tribunal Decision**

12. The appeal came before the Judge sitting at Manchester on 20 July 2021. The respondent was represented. The sponsor did not attend but informed the Judge by email that the hearing could properly proceed in his absence:

'8. S did not attend the hearing. He sent an email at 13:17 hours on 20/07/21 which stated the following: '...Today is my hearing in the court but unfortunately, our car is broken down and I cannot make this. I also called your customer service, to explain this situation. I could not make it to the court nevertheless I have already sent the required bundle of documents to the UKVI & court. A lot of my time is already consumed by the collection of all the documents, therefore without further delay, I would like the court to proceed with the case, in my absence. Also, I would like to hear from the court regarding my case as soon as possible...''

13. The appellant relied upon a bundle of documents including his "Explanation of the Case" by which he detailed, *inter alia*:

'Mr. Noor Ullah who is my biological brother, sponsor, and an EEA national, has provided evidence in the form of his Swedish passport. He is a qualified person in this application who have [sic] also a right to deal with tribunal court and the UK Home Office on behalf of me.

...

Noor Ullah's constant job earning per month is £1,400 to 1,500 p/m to support himself and his brother during his stay and can accommodate him easily with his monthly budget in form of (Living Expenses, Travel, and Tour Expenses, and so on).

He is currently supporting my needs while in Pakistan and will continue to do while I will be in the UK.

...

According to the Directive 2004/38/EC and Immigration (European Economic Area) Regulations 2016 there is no requirement to provide expenses detail of the applicant whether it is a daily uses items or any kind of need-based accessories to survive. The remittance slips prove the dependency of me on Noor Ullah, so this point raised by the respondent regarding that is baseless and has no worth attaching further documentation to prove he is dependent on the sponsor.

...

After completing my education in Saudi Arabia, in 2017, I started my business of carwash at the request of my father and my EEA National brother whom I feel obliged to as they raised me. My EEA national Brother sends us the hefty amount to start this carwash business (Remittance Receipts enclosed in a bundle in 2018 for fixing the features and machinery).

My major education was in Islamic studies, which means I had no knowledge or expertise in the business. Throughout the following years, I tried to manage the business, even put all our savings into it, but it kept failing as I didn't know where I was going wrong, which I learned later because I had no business idea and plan. I had no guidance at the time when I was doing business.

The point raised by the Respondent regarding my employment is also baseless as I am running a service station that does not cover my daily expenses. That's why I have to depend financially upon my EEA national brother and sponsor. Checks made by the Respondent by the Federal board of revenue Pakistan do not prove that I am paying income tax. My annual income as per tax return in the year July 2017 - June 2018 was PKR120,000/- (£600.47) and my income in the year July 2018 - June 2019 was PKR156,000/- (£780.62). If this income is converted on monthly basis, that does not exceed PKR13,000/- (£65.05) per month. (All evidence enclosed in a bundle). This is a very

low amount and cannot cover all the expenses of a person. As it is very expensive nowadays living cost, it is impossible To bear all living costs in such low income so that's why I need the financial support of my EEA national brother and sponsor.

Here I would also like to bring this to your kind attention that due to loss in my carwash business I had to close my business on 5 July 2019 and as per FBR business closure Rules, I had Informed FBR authority by providing the required application/affidavit (a legal document) In July 2019. In response, I was asked by the FBR authorities to file a tax return for the said year which was submitted in March 2020 and I had again Informed local FBR authorities through a letter which was received by the concerned authorities on 17 March 2020.

...

Therefore, I am solely dependent on my EEA national biological brother's money.'

14. The appellant also filed a letter dated 17 July 2021, observing, *inter alia*, that the respondent had not given appropriate weight to the remittance receipts filed with his application that were indicative of his financial dependence upon the sponsor.
15. The Judge noted at [11] of his decision that he had read all the documents submitted by both parties. In respect of the sponsor's evidence the Judge recorded at [12] - [13] of his decision:
  - '12. 'I am also a computer engineer and working part-time as an IT professional in the capacity of self-employed as well in London. ... As this is part-time work so average amount from this work I can earn nearly from £600.00 to 1000.00 per month depending on work.'
  13. 'Sadam Ali Darwash is my real & biological brother, who is currently living with our parents as a family member in the same house in Pakistan. In other simple words, he is also our household member & will also be our household member when he joins me in the UK. ... he is my dependent, by all means. I was also responsible for all his education, lodging & boarding's since he was only 12 years old, due to our family ties and our Asian traditions from our elders. That's why before 2020, I sent apart from my earnings, to our father regularly in Pakistan, and then after 2020, I sent all the transactions to my real brother Sadam Ai Darwash without any gap till now...I sent the money to Sadam Ali Darwash, nearly £200.00 to £225 every month.'
16. The Judge did not accept that the appellant and the sponsor were brothers, at [16]-[19]:
  - '16. For reasons given below I conclude that A has not proved on the balance of probabilities that he is related to S as claimed and that he is financially dependent on S as claimed or at all. First, there is inadequate independent reliable documentary evidence to

establish the claimed relationship. I have seen the following birth certificates: (a) A copy of A's birth certificate recording that he was born on 01/10/92 issued on 06/11/19 and his father was called Daftar Ali (b) S's birth certificate dated 06/11/19 stating that he was born on 15/06/84 and his father was called Daftar Ali (c) S's birth certificate dated 08/03/2002 stating that he was born on 15/06/84 and his father was called Daftar Ali

17. I conclude that these documents are inadequate to establish the claimed relationship. This is because first there is no explanation as to why the birth certificates were issued so many years after the births and secondly there is no adequate explanation as to why S has two birth certificates issued on different dates. A's ability to discharge the burden of proof upon him in relation to this issue is not assisted by S's decision not to attend and answer questions about these matters. I can only give limited evidential weight to the 'Statement of Application' from A, S's affidavit, the covering letter from A, the document entitled 'Appellant's Explanation of the Case' and the statement from Daftar Ali dated 23/02/2020 about that matter as they are self-serving and merely repeat the claims made by S&A and do not provide the independent evidence required.
18. In relation to the birth certificates I have also taken into account the following documents:
  - (a) Passport of S
  - (b) S's educational certificate from 2000
  - (c) S's Pakistani ID card
  - (d) Family registration certificate
  - (e) National Identity Card of Appellant
  - (f) A's Passport
  - (g) Letter from Union Council Peshawar
  - (h) Secondary School Certificate for A
  - (i) Higher Secondary Certificate for A
  - (j) Domicile Certificate of A
  - (k) Police Clearance certificate
19. However I conclude that none of these documents taken separately or together in the round provide adequate reliable independent evidence of the claimed relationship. This is because in relation to all of these documents there is a lack of explanation as to what information was provided to the makers of the documents concerning dates of birth and familial relationships and what independent checks were made by the makers of the

documents other than simply relying on (and repeating without verification) the information contained in the aforementioned birth certificates which for reasons given above I conclude cannot be proved on the balance of probabilities to be reliable documents.'

17. Additionally, the Judge did not accept that the appellant was dependent upon the sponsor, at [20]-[23]:

- '20. In addition neither S or A have provided a satisfactory explanation as to why A is dependent on S and I do not accept their claims that A does not receive financial support from other sources in Pakistan. The evidence does establish that S has sent money to A but there is inadequate evidence that A needs this money to meet his essential needs. He has failed to submit adequate evidence of his income or expenditure such as bank account statements or an independently verifiable schedules of his expenditure.
21. A's ability to discharge the burden of proof upon him in relation to this issue is not assisted by S's decision not to attend and answer questions about these matters. I can only give limited evidential weight to the 'Statement of Application' from A, S's affidavit, the covering letter from A, the document entitled 'Appellant's Explanation of the Case' and the statement from Daftar Ali dated 23/02/2020 about that matter as they are self-serving and merely repeat the claims made by S&A and do not constitute the independent evidence required.
22. In addition, there is a lack of reliable evidence concerning S's ability to provide now or in the past the financial support to A that is claimed. I have seen inadequate independent reliable documentary evidence of S's income liabilities and outgoings over the period of claimed dependency.
23. S's payslips only cover the period January to June 2021 and his P60s only cover 2020 & 2021. Although his bank account statement date from 01/01/2020 to 27/06/2021, there is inadequate documentary evidence of his bills and expenditure. There is therefore a lack of explanation as to how S can support himself as well as supposedly send financial support for the appellant in Pakistan.'

### **Grounds of Appeal**

18. The appellant relied upon short grounds of appeal authored by Orwell Solicitors. Two grounds are advanced:

- i) The First-tier Tribunal erred in finding that the appellant and the sponsor are not related.
- ii) The First-tier Tribunal erred in finding that the appellant is not dependent upon the sponsor.

19. In respect of ground 1, a challenge to the Judge's decision as to the claimed relationship, the grounds simply restate the appellant's case, and

no more. There is no identification of an error of law, beyond the evidence filed establishing that the appellant and sponsor are brothers. At the hearing before me Mrs. Siddique accepted that the ground as drafted can only constitute a rationality challenge.

20. As for the issue of dependency, the appellant's case is again simply restated:

'7. The application was refused on the basis that the Appellant was not financially dependent on the EEA sponsor and that his essential needs are not being met. It was decided that he did not provide adequate proof of his dependency.

8. The tribunal also erred in establishing that the Appellant was not dependent on the sponsor while in Pakistan. The witness statements and evidence by the Sponsor and the Appellant stated that the Appellant was constantly receiving money from the sponsor when he was in Pakistan. The sponsor and the appellant provided documentary evidence.'

21. Permission to appeal was granted by Upper Tribunal Judge Owens on 8 March 2022, with the reasoning that:

'5. It is at least arguable that the Judge's assessment of the evidence of the relationship was irrational in light of the weight of the evidence and that he erred in his assessment of the dependency.'

22. The respondent filed a Rule 24 response dated 6 April 2022:

'3. The grounds simply argue that the FTTJ should have found that the appellant was the brother of the sponsor, and that he was dependent on the sponsor. As set out in the decision, the sponsor failed to attend the hearing. Neither the appellant nor sponsor were able to answer the central issue highlighted by the ECO in the refusal decision as to the late registration not only of the birth of the appellant but that of the sponsor.

4. It was far from irrational for the FTTJ to have reservations over the documents and thus affording them only little weight was a conclusion perfectly open to him. The same concerns applied to the issue of claimed dependency, and the absence of answer to evidence highlighted by the ECO of the appellant being in employment. In that context, the FTTJ was entitled to conclude [20] that the appellant [did not require] money from the appellant to meet his essential needs.'

## **Law**

23. Directive 2004/38/EC provides that Member States must facilitate the entry of extended family members in accordance with national law, including a family member who is dependent on the Union citizen. The CJEU confirmed in Case C-83/11 *Secretary of State for the Home*



*Department v. Rahman* EU:C:2012:519, [2013] QB 249, at [33], that dependency is to be established as existing at the date of the application:

'33 It is clear that such ties may exist without the family member of the Union citizen having resided in the same State as that citizen or having been a dependant of that citizen shortly before or at the time when the latter settled in the host State. On the other hand, the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the Union citizen on whom he is dependent.'

24. Regulation 8(2)(b) of the Immigration (European Economic Area) Regulations 2016, as preserved, defines 'extended family member' for domestic purposes.

25. In *Bigia v. Entry Clearance Officer* [2009] EWCA Civ 79, [2009] Imm AR 515, at [24], the Court of Appeal confirmed that the test of dependency is taken to be that established by the CJEU in Case C-1/05 *Jia v. Migrationsverket* EU:C:2007:1, [2007] QB 545, at [43]:

'43. ... need the material support of [the Union citizen] or his or her spouse in order to meet their essential needs in the State of origin of those family members or the State from which they have come at the time when they apply to join the [Union citizen].

26. The appellant in this matter is therefore required to establish that the material support received by his sponsor met his essential needs at the date of application.

## **Analysis**

27. For the reasons addressed in respect of the adjournment request it is appropriate for this Tribunal to initially consider ground 2 and the issue of dependency.

### *Dependency*

28. As observed above, the grounds of appeal simply restate the appellant's case and identify no error of law beyond the Judge not rationally being able to find against the appellant consequent to the weight of the evidence relied upon.

29. It is appropriate to consider the evidence that was placed before the First-tier Tribunal. The appellant's bundle contains records of returns of income filed with the Pakistan Federal Board of Revenue (FBR) for the years ending June 2018 and 2019.

30. For the year concluding in 2018 the appellant was identified as having an income of PKR120,000 (approximately £470), an outflow of PKR114,000 (approximately £445) and assets of PKR46,000 (approximately £180).

31. For the tax year ending in June 2019 his income was identified as PKR156,000 (approximately £610) with assets of PKR51,000 (approximately £200). A Section 114(1) return of income document identifies that a gross profit of PKR356,000 (£1,392.32) was made. Rent was identified as PKR120,000 (approximately £470). 'Management, Administrative, Selling and Financial Expenses' were confirmed as PKR200,000 (approximately £782). Salaries and wages for the year were identified as PKR80,000 (approximately £310). Consequently, the accounting profit was identified as the income figure identified above, the sum of PKR156,000. The business assets were identified as amounting to PKR50,000, the same sum for stock, equity and capital. In respect of personal expenses, a total of PKR151,000 was deducted including PKR74,500 in respect of 'other personal and household expenses'.
32. Turning to the remittances relied upon by the appellant, evidence was provided as to the sponsor sending him approximately £160 in 2018, approximately £205 in 2019 and the sum of approximately £279 up to the date of application in 2020. The remittances that postdate the application in March 2020, amounting to some £4,520 over approximately eighteen months, are incapable of establishing dependency as at the date of application. It is therefore clear that the level of remittance was limited in the two to three years prior to the application. It is observed that the appellant's evidence is that at least some of the remittances he received in 2019 were for his business and not his personal expenses. I note that the level of the remittances prior to the application, which amount to approximately £600, are well below the profit that he was making from his business.
33. The difficulty for the appellant in respect of the grounds of appeal as advanced is that insufficient care has been taken to consider the Judge's actual reasoning, particularly at [20]; namely the conclusion in respect of essential needs that there was a lack of adequate evidence as to his income and expenditure. The appellant has relied upon the remittances and his explanation for giving up his business but has not focussed upon the requirement to establish that the sums received from his sponsor were for his essential needs. The fundamental problem for the appellant, upon whom the burden of proof falls, is that there is a significant lack of evidence identifying his daily expenses, let alone his essential needs. The evidence is silent as to where he resides, whether he resides with his parents or others, or whether he lives on his own. The evidence is, at best, very vague as to how much income he requires to meet the basics of life such as the purchase of food. There is no evidence as to how much he requires for clothing. The accounts provided show that he capable of paying for his travelling requirements, his phone, his medical bills, his 'club', his attendance at functions and gatherings as well as his donations through the profit he made from his business.
34. Consequently, the fundamental difficulty for the appellant is not that the Judge did not consider the evidence filed, but the Judge did consider the evidence and reasonably concluded that it was not sufficient, in the

absence of relevant evidence, to establish his purported dependency upon his sponsor to meet his essential needs. I am satisfied that the reasoning provided by the Judge on the face of the evidence provided was cogent and lawful. The appellant simply failed to address the key requirement that he establish that the funds provided by the sponsor met his essential needs. In the circumstances, there is no material error and ground 2 must be dismissed.

### *Relationship*

35. Turning to ground 1, on the evidence placed before him, and in the absence of the sponsor, the Judge gave cogent and lawful reasons for finding that the appellant and his brother are not siblings. It may be that another Judge could have come to a different conclusion, but it cannot be said that no Judge when properly directing themselves could not have come to this decision.
36. It could be that the awaited DNA evidence will establish to the requisite standard that the appellant and the sponsor are biological siblings. But that evidence was not before the Judge and it is not presently before this Tribunal. If the appellant had been successful on ground 2, I would have adjourned this hearing to permit the obtaining of the awaited DNA evidence and further permit a rule 15(2A) application to be made. In the circumstances, I would have been mindful of the judgment of Lord Justice Brooke in *R (Iran) v. Secretary of State for the Home Department* [2005] EWCA Civ 982, [2005] Imm AR 535, at [9(vii)]. However, as the appellant has been unable to prove the required dependency, and even if he were later able to establish his sibling relationship with his brother any error in respect of the Judge's decision on this matter would not be material.
37. In those circumstances, this appeal must be dismissed.

### **Postscript**

38. The parties were informed at the hearing on 1 July 2022 that the appeal was dismissed, with short reasons provided, and a decision in this matter was subsequently drafted on 6 July 2022. There was a delay in it being sent out.
39. On 7 July 2022 the Upper Tribunal received email correspondence from the appellant:

Dear Sirs, RE: Mr. Sadam Ali Darwash (Appellant) D.O.B: 01.10.1992 Pakistan UI-2021-001393 I am the appellant in the above matter. I have withdrawn my instructions from Orwell Solicitors and they no longer represent me in the above matter. Further to my hearing on 01st July 2022, please find enclosed herewith my DNA report for the attention of the Judge. Please also find enclosed herewith further documentary evidence in support of my dependency proof which was sent along with my initial application to the Home Office but has not been considered in my appeals. Could you please place this further evidence before the

Judge so he can make a decision on my appeal? I look forward to hearing from you  
Yours faithfully, Sadam Ali Darwash

40. The email, and attached documents, were not sent to the respondent.
41. A further chasing email was received by the Upper Tribunal from the appellant on 3 August 2022. Again, the respondent was not copied into the correspondence.
42. Rule 40(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 permits the Upper Tribunal to give a decision orally at a hearing, as I did in this appeal. Having done so that is the decision on the appeal, and the effect of *Patel v Secretary of State for the Home Department* [2015] EWCA Civ 1175, [2016] Imm. A.R. 444, is that I do not now possess a power to revise or revoke the decision.
43. Consequently, I am unable to admit the documents served post-oral decision. In any event, if I enjoyed such power, I would not admit them as they have not been served upon the respondent.
44. Ultimately, the documents do not add anything to the appellant's case save that he is now in possession of the DNA test results. He seeks to file several documents which he states were placed before the ECO, including a rent agreement and various receipts. These documents were not placed before the Judge and no complaint was made either before the First-tier Tribunal nor this Tribunal as to their not being placed within the respondent's bundle. I observe that the appellant was legally represented before me, and no point was taken as to missing documents. It was open to the appellant to file and serve the documents prior to the First-tier Tribunal appeal. Importantly, the documents do not aid the appellant because of the narrow scope of the grounds of challenge advanced on his behalf by his legal representatives, which fail to engage with the Judge's actual reasoning.

### **Notice of Decision**

45. The decision of the First-tier Tribunal dated 5 August 2021 is not subject to a material error of law, and accordingly the appellant's appeal is dismissed.

Signed: *D O'Callaghan*  
**Upper Tribunal Judge O'Callaghan**

Date: 10 August 2022