



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

Appeal Numbers: EA/06120/2021
(UI-2022-002823)

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 9 November 2022**

**Decision & Reasons Promulgated
On 22 December 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**MR IMRAN HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

AND

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Khalid, instructed on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed the appeal against the decision made to refuse the application for a family permit as a dependent extended family member of an EEA national in a decision promulgated on 12 March 2022 .

2. The FtTJ did not make an anonymity order and no application was made for such an order before the Upper Tribunal.

The background:

3. The background is set out in the evidence in the decision of the FtTJ and the documents. The appellant applied for a family permit as the extended family member of the sponsor (the appellant's brother), a national of Spain, resident in the United Kingdom.
4. The decision letter stated that to apply for an EEA permit as the Extended Family Member of an EEA national in accordance with Regulation 8 of the Immigration (EEA) Regulations 2016, the appellant must satisfy the respondent that he is financially dependent on the sponsor.
5. The application was refused by the Entry Clearance Officer (ECO) with reasons in the refusal dated 8 March 2021. The ECO set out the money transfers provided by the appellant were historic between 2009 -2012 and one from 2015 and the rest dated between 2017 to 2020. It was considered the limited amount of evidence in isolation did not demonstrate financial dependency on the sponsor. In addition it was stated that the appellant had not demonstrated that any money he received from the sponsor was used in a way to support or meet his essential needs or that without such support it would not be able to meet essential needs.
6. The ECO concluded that on the evidence submitted in support of the application, he was not satisfied that the appellant was dependent on the sponsor and therefore was not satisfied that he was an Extended Family Member in accordance with Regulation 8 (2) of the Immigration (EEA) Regulations 2016. The application for an EEA family permit was refused as the appellant could not meet all of the requirements of Regulation 12.
7. The appellant appealed and the appeal came before the FtT on the 1 March 2022.
8. In a decision promulgated on 3 March 2022 the FtTJ dismissed his appeal having found that the appellant had not demonstrated on the balance of probabilities that he was dependent on the sponsor.
9. Permission to appeal was issued and on 17 May 2022 permission was granted by FtTJ Roots. The appeal came before the Upper Tribunal on the 9 November 2022. The appellant was represented by Ms Khalid, who had appeared before the FtT and the Entry Clearance Officer ("ECO") by Mr Diwnycz, Senior Presenting Officer.
10. For the purposes of the hearing the evidence was contained in the documentation filed on the CE File, which included the bundle of

documents on behalf of the appellant which had been originally filed before the FTT, the respondent's bundle including the decision letter.

11. At the hearing Ms Khalid adopted her grounds of challenge and carefully went through those grounds by reference to the decision of the FtTJ, the material in the bundle and the relevant law applicable on the issue of dependency.
12. After hearing the submissions Mr Diwnycz on behalf of the respondent conceded that there was a material error of law in the decision and that as a consequence the decision should be set aside and remade by the Upper Tribunal by allowing the appeal based on the evidence that there was before the FtTJ.
13. The Immigration (European Economic Area) Regulations 2016 have now been revoked by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 Schedule 1(1) paragraph 2(2) (December 31, 2020. Revocation, however, has effect subject to savings specified in The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, Regulation 2 and Schedule 1 and The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 Regulations ("The Transitional Provisions").
14. Schedule 3 paragraph 5 of the Transitional Provisions deals with existing appeal rights and appeals and as this appeal was extant prior to commencement day, and it is not argued by either party that the tribunal does not have jurisdiction to consider the appeal.
15. Prior to revocation Regulation 8 of the 2016 Regulations (as far as relevant) read as follows:

Extended family member"

8.- (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (1A),(2), (3), (4) or (5).

(1A) ...

(2) The condition in this paragraph is that the person is-"

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either-"

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

16. Ms Khalid referred to the relevant law on the issue of dependency by reference to the cases set out in the respondent's guidance. However, there is no dispute as to the relevant principles and most recently they have been set out in the decision of Latayan v SSHD [2020] EWCA Civ 191.

17. Dependency is a question of fact and in that decision, at paragraph 23 the court cited the decision of SM (India) v ECO (Mumbai) [2009] EWCA Civ 1426 as follows:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket* Case C-1/05; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket* Case C-423/12; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC), dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

18. The question of dependency as set out above entails a situation of real dependence in which the family members, in this case the appellant, is not in a position to support themselves thus needing the material support of the sponsor in order to meet their essential needs.

19. Whilst the ECO did not accept the money transfer receipts provided sufficient evidence of dependency, the FtTJ found on the evidence of the appellant's sponsor had been sending money to the family (who then comprised of the appellant's parents and the appellant) since his time in Spain which was from 2005 and whilst he been in the UK from 2015 (see paragraphs 12 and 18). As to the gaps in the money transfers, the FtTJ accepted that the appellant's sponsor gave money to his family when he visited them in Pakistan and the judge accepted

the evidence and the explanation given by the sponsor that money transfers were not always regularly made each month (see paragraph 12).

20. The issue in the grounds related to the assessment of the appellant's essential needs and the FtTJ's direction on the issue of dependency based on whether the appellant was in employment.
21. Dealing with the issue of essential needs, Ms Khalid submitted that at the hearing it was argued that the financial assistance provided helped pay for the appellant's needs including the electricity bill which was paid in cash. The evidence was in the bundle and the FtTJ accepted this (see paragraph 17), and that the appellant was provided with accommodation and thus provided for as accommodation needs.
22. Ms Khalid stated that in the evidence it was said that money was used for gas cylinders (to use for cooking) and food. This was the context of finding made at paragraph 17 where the FtTJ accepted that it was usual in Pakistan to pay for things with cash and that receipts are not always given. The judge also said that he had been left to infer what the essential needs were, but Ms Khalid submitted that those related to the accommodation, bills, food and gas provision.
23. Based on that evidence, and contrary to the assessment made by the FtTJ it is accepted on behalf of the respondent that there was sufficient evidence that the money provided by the sponsor which was accepted by the FtTJ did meet the appellant's essential needs and that such essential needs were identified from accommodation needs and paying household bills and utilities.
24. It is also conceded on behalf of the respondent that the FtTJ erred in his assessment of the circumstances of the appellant and unnecessarily focused on the appellant's lack of employment (see paragraph 18). The judge did however comment at paragraph 16 that "I am not concerned with why the appellant needs assistance" which runs counter to paragraph 18 and the concern about employment.
25. As set out in the decision, of Lim v ECO, Manila [2015] EWCA Civ 1383, Elias LJ (with whom McCombe and Ryder LJ agreed) summarised what was required as follows at [32]:

"In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact

that he chooses not to get a job and become self-supporting is irrelevant. ...”.

26. Consequently it was accepted on behalf of the respondent that the evidence demonstrated that the appellant was not supporting himself from his own resources but by remittances from the sponsor and the fact that he did not have a job or could have one was irrelevant to the assessment.
27. When applying the test to the circumstances of this appeal Mr Diwnycz accepted that the evidence demonstrated that the appellant is dependent on the sponsor for his essential needs which included the provision of accommodation and the payment of the utilities such as the electricity bill which had been evidenced in the documentation.
28. There was no dispute that the EEA sponsor is a qualified person who is genuinely exercising Treaty Rights in the United Kingdom.
29. In all the circumstances and when considering the evidence as a whole, it is agreed between the advocates that the appellant has established on the balance of probabilities that he is dependent upon the EEA sponsor. This is because he is presently unable to support himself and is in receipt of financial support for his basic and essential needs.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law, the decision is set aside and remade as follows:

The appeal is allowed under the EEA Regulations.

Signed Upper Tribunal Judge Reeds

Dated: 10 November 2022