



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

Appeal Number: UI-2021-001437  
EA/06480/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 August 2022**

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

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**SAEED ASHRAF**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr S Ashraf (Sponsor)

For the Respondent: Ms S Cunha, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of Pakistan and aged 33. He brings his appeal under regulation 3 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. He challenges a decision of the respondent to refuse to issue him with an EEA family permit as an extended family member of a Union citizen exercising EEA Treaty rights.

2. His sponsor is his brother, Mr Shab haz Ashraf, a Swedish national residing and working in this country.
3. The appellant's appeal was initially allowed by a decision of Judge of the First-tier Tribunal O'Hanlon, dated 3 November 2021. The respondent was granted permission to appeal, and I subsequently set aside the decision of the First-tier Tribunal concluding that Judge O'Hanlon has failed to lawfully apply the 'essential needs' requirement of the dependency test and had further failed to engage with the alternative sources of income received by the appellant which were relied upon in the respondent's decision letter.
4. By means of my error of law decision the following findings of fact were preserved:
  - '19. With the Appellant's appeal, a copy of the Sponsor's birth certificate was provided. This showed that the Sponsor had the same parents as shown as the Appellant's parents on the Appellant's birth certificate. In all of the circumstances I am satisfied that the Appellant and Sponsor are brothers.
  20. The Respondent was also not satisfied that the Sponsor was exercising Treaty rights in the United Kingdom but the Appellant's position in this respect was that on the basis of the letter from Jaspa Enfield Limited dated 27<sup>th</sup> November 2020 the Sponsor had been employed by them since August of 2020. Payslips for the Sponsor provided by the Appellant also supported this. However, the Respondent took the view that the Sponsor's Swedish bank statements of money transfers suggested that the Sponsor was still residing in Sweden at that time. The Respondent found that the Appellant had not provided sufficient evidence to demonstrate that his Sponsor was exercising Treaty rights in the United Kingdom.
  21. I do not find the Respondent's position regarding the Sponsor exercising Treaty rights to be persuasive. The Respondent has cast doubt on the authenticity of the documentation provided without specifying the reason for those doubts. The letter from the Sponsor's employer was dated 27<sup>th</sup> November 2020, the approximate time that the application was made by the Appellant, and the Respondent appeared to cast doubt upon this evidence of the Sponsor's employment on the basis that after January of 2020 when it was stated the Sponsor came to the United Kingdom the Sponsor maintained a Swedish bank account and that money transfers were made from that account to the Appellant. I do not find the Respondent's position in that respect to be tenable. I do not find it lacks plausibility that the Sponsor would come to the United Kingdom but would still have an operative bank account in Sweden for some time after he had left that country. Although that situation would appear to have existed for some months nothing has been put forward on behalf of the Respondent to suggest that the Sponsor would be unable to operate his Swedish bank account whilst residing in the United Kingdom. Having considered all of the evidence before me, I am satisfied to the requisite standard of proof that at the time of the Appellant's application the Appellant's Sponsor was living and working in the United Kingdom

and that he is therefore an EEA national exercising Treaty rights for the purposes of the 2016 Regulations.'

### **Brief Facts**

5. The sponsor resided in Pakistan until 2012 when he moved to Sweden, subsequently securing Swedish citizenship. He relocated to the United Kingdom, exercising EEA Treaty rights in this country.
6. On 16 November 2020 the appellant applied for an EEA family permit, asserting that he was dependent upon his EEA sponsor. The respondent refused the application by means of a decision dated 13 March 2021 observing, *inter alia*:

- You state that you are financially reliant on your sponsor to meet your essential living needs. Additionally, you state that you receive £400 monthly from your sponsor. For this office to establish your dependency, we must be satisfied that you require financial support from your EEA national sponsor to meet your essential living needs. In support of this, you have provided 10 money transfer remittance receipts dated between the 2 March 2020 and the 15 January 2021 from your sponsor, the majority of these from Sweden. You have also provided a copy of your bank statement from Allied Bank - account ending 0016. Though this bank statement shows credits which reflect some of the money transfers, I note that the account is predominantly made up of a number of additional credits which are not reflective of being from your sponsor. Therefore, I cannot be satisfied that any funds that your sponsor sends to you can be accredited to meeting your essential living needs. I note you have provided 2 utility bills in your name, however there is no evidence provided that shows funds from your sponsor are used for this purpose. In addition to money transfers, this office would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met. The fact of transferring money is not evidence that it is needed by the recipient. Unfortunately, this limited amount [of] evidence does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.
- You have stated your sponsor is employed and from the information provided they receive an annual income of £12,500, amounting to approximately £932.40 per month. You state that your sponsor sends you £400 per month which is almost half their entire monthly income. This is without considering any of their own living expenses. As a result, I am not satisfied that your sponsor is financially able to meet your essential needs, as well as their own - and the needs of any other potential dependant family members currently residing in the UK. As a result, I am not

satisfied that your sponsor is in a position to support you financially and meet your essential needs.

- On the evidence submitted in support of your application and on the balance of probability I am not satisfied ... or dependent on your sponsor. I am therefore not satisfied that you are an extended family member in accordance with Regulation(s) 6(1) & 8(2) of the Immigration (European Economic Area) Regulations 2016.'

## **Law**

7. Directive 2004/38/EC provides that Member States must facilitate the entry of other (or extended) family members in accordance with national law, including a family member who is dependent on the Union citizen.
8. Article 3(2) of the Directive:
  - '2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:
    - (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

...'
9. In order to fall within article 3(2) of the Directive the other family member must be a dependant or member of the household of the Union citizen in the country from which they have come; or there must be serious health grounds strictly requiring the personal care by the Union citizen.
10. Regulation 8(2)(b) of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations') defined 'extended family member' for domestic purposes.

### *Domestic legal framework*

11. I am mindful that the appellant is unrepresented and seek to write this decision in an accessible manner. However, his appeal is impacted by the complexity of the legislative framework implemented in respect of the United Kingdom's withdrawal from the European Union, and it is proper that relevant provisions are detailed below to explain the scope and nature of the legislation concerned with the appellant's appeal.
12. Section 1 of the European Union (Withdrawal) Act 2018 ('the 2018 Act') repealed the European Communities Act 1972 on 'exit day', which was defined by section 20 of the 2018 Act as 11pm on 31 January 2020. Exit

day was followed by an implementation period (also referred to as the transition period) which ended on 'IP completion day', as defined in section 39 of the European Union (Withdrawal Agreement) Act 2020 ('the 2020 WA Act') as 11pm on 31 December 2020. During the implementation period, the 1972 Act continued to have effect pursuant to section 1A of the 2018 Act, as amended by the 2020 WA Act.

13. The appellant's application for an EEA family permit was made on 16 November 2020 and so was made during the implementation period.
14. European Union free movement rights lost both their direct effect and their enforceability from 11pm on 31 December 2020. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 revoked the 2016 Regulations and prevents them from continuing to have effect as retained the EU law, pursuant to sections 2 and 4 of the 2018 Act.
15. Relevant transitional provisions are contained in the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. Paragraph 3 of Schedule 3 to this Regulation makes specific provision in respect of pending applications for documentation under the 2016 Regulations. Relevant to this appeal, paragraph 3(1) provides for regulation 12 of the 2016 Regulations to continue to apply to an application for an EEA family permit, 'which was validly made in accordance with the EEA Regulations 2016 before commencement day' (11pm on 31 December 2020).
16. The appellant enjoys the benefit of this transitional provision, having applied using the specified application form, so permitting the respondent to consider his application for an EEA family permit under the 2016 Regulations.

#### *Dependency requirement*

17. 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.'
18. 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].

19. The Upper Tribunal confirmed in *Moneke* (EEA - OFMs) Nigeria [2011] UKUT 00341 (IAC), [2011] Imm AR 928, at [41]:

'41. Nevertheless, dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in *SM (India)* [2009] EWCA Civ 1426 dependency means dependency in the sense used by the Court of Justice in the case of *Lebon* [1987] ECR 2811. For present purposes we accept that the definition of dependency is accurately captured by the current UKBA ECIs which read as follows at ch.5.12:

'In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations:

Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/her spouse/civil partner in order to meet his/her **essential needs** - not in order to have a certain level of income.

Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support/income from other sources.

There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment.

The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived.'

20. 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.

### **Evidence**

21. Accompanying the appellant's application form were various documents, including bank statements and utility bills in his name, accompanied by payslips provided by the sponsor.

22. The appellant subsequently provided a letter to the respondent, dated 11 January 2021, confirming that he holds a bachelor's degree and is currently single. The letter details, *inter alia*:

“Please note that I have zero income on my own in Pakistan as I have no job and never had any job. I completely rely on the remittance sent to me by my brother Mr Shabhaz Ashraf. I have no savings or source of income in Pakistan and rely 100% on the money provided to me by my brother. My brother has been supporting me since he left Pakistan. He has been sending money almost every month through remittance channels or through family friends. He used to send money around 400 - 500 GBP.”

23. Following the issuing of the respondent’s refusal decision the appellant wrote a further letter, which accompanied his notice of appeal, detailing, *inter alia*:

‘Secondly, as stated in decision letter that a handful of payslips of Sponsor job in the UK were provided. Some additional supporting documents were provided which shows sponsor Swedish bank statement and the whole point was to show that sponsor has got enough savings in his account to support the sponsor all the time. Still Sponsor has got adequate funds in his Swedish Bank account which he has earned during his full-time job in Sweden. The Sponsor still has got access to his Swedish bank accounts and he can do any kind of financial transaction while residing in the UK.

Thirdly, the applicant has got documentary evidence which states his personal details and the whole family circumstances which are fully dependant on the sponsor. Whatever money is being transferred to applicant bank account is used to meet daily basic needs. To prove this, the applicant has attached few utility bills, grocery bills, shopping bills to support his claim that applicant is dependant on sponsor. The additional credits in my Bank account which were mentioned in refusal letter were also sent to me by sponsor of which evidentiary documents (receipts) are attached.’

24. Relevant documentary evidence accompanying the grounds of appeal are receipts from ‘Quality Mart’, a receipt from ‘Khaadi’, a receipt from ‘The Shoppe Club’, several bills from ‘SUI Northern Gas Pipeline Limited’, several receipts from ‘Farooq Departmental Store’, a receipt from ‘Karachi Decor Gallery’, a receipt from ‘Fine Traders’ and two receipts from ‘Nawab Cloth House’. All documents are in the English language and all documents are attested as being genuine documents by an advocate.
25. In my error of law decision, I observed at paragraph [31] that the appellant was a litigant in person and may not have properly understood the full extent of the evidential burden placed upon him. I noted that there was no evidence as to the appellant’s significant outgoings, for example as to whether he paid rent, and indeed there was no evidence as to what accommodation he lived in. I therefore directed that the appellant was to file and serve, if he considered it necessary, any further evidence upon which he wished to rely.
26. The appellant took advantage of the direction and filed further evidence. By means of a covering letter the appellant detailed, *inter alia*:

- '1. As The Judge asked to provide sufficient evidence of financial personal circumstances, which previously was regarded as little evidence. This time now, I have added more receipts which clearly explains my daily expenses that includes grocery bills, water and maintenance bills, fuel bills, meat bills, milk bills, original and translated (Urdu to English) copy of receipt of motorcycle purchased on instalments and paying bills of these instalments, purchase receipt of refrigerator on instalments and paying bills of these instalments.
  2. Secondly, The Tribunal Court asked about my residential status against which I have provided rent deed and it's translated copy of a small flat I live separately in Pakistan. My brother is financially assisting me to cover these expenses.
  3. As far as the question of without employment is concerned, it is a fact that I have passed my degree. However, given the consideration to current economic situation of Pakistan, there are not sufficient jobs available and secondly there are only few seats and competition is very high. These are the reasons I still have not been offered any jobs in Pakistan.
  4. Another point was raised about alternative sources of money received in to respondent account. All money received by unidentified sources were sent to me for the payments of one of my close friend's mother health. Unfortunately, they did not have any bank accounts in Pakistan so as a courtesy, I used to receive their remittances in my bank account.'
27. The additional documents include several receipts from 'Hafiz Vegetable and Meat Shop', 'Al-Sheikh General and Karyana Store', 'Zaka Milk Shop', 'Bhalwal Filling Station', 'Rizwan Electronics' and the 'EHSAS Welfare Society'. The appellant provided a sales receipt from the 'Motorcycles Association' in respect of the purchase of a Honda 125cc motorbike. Also provided were receipts from 'Munir Motors' in respect of the payment of instalments.
  28. A rent deed was provided confirming that the appellant rented a property in Pakistan from 1 March 2019.
  29. I observe that no supporting evidence has been provided to corroborate the evidence presented in paragraph 4 of the letter detailed at [26] above.
  30. The sponsor attended the hearing before me and was cross-examined. He explained that most of the documents filed by the appellant were originally in the English language and were attested by an advocate or notary. Certain documents were translated from Urdu into English, and these were confirmed by stamps confirming that they were translated.
  31. There was confusion on the sponsor's part as to whether documents from 'EHSAS Welfare Society' were translated from Urdu. He believed that they were, though he accepted that the stamp on each of the receipts was confirmed that the documents had been attested. He was unable to explain as to why each of the receipts was undated, though observed that



elsewhere in the individual documents it was clear for which month of the year the bill had been tendered.

32. The sponsor's attention was drawn to several receipts from Hafiz Vegetable and Meat Shop, Al-Sheikh General and Karyana Store, Zaka Milk Shop, Munir Motors, Bhalwal Filling Station and Rizwan Electronics. He was asked why they were written in English and not Urdu. The sponsor confirmed that these were not translations, but the original receipts handed to his brother. When asked by Ms Cunha as to why a milk shop would issue receipts in the English language, the sponsor replied that whilst the owner of the milk shop was not educated and so wrote receipts in Urdu, his son was educated and so wrote in English. When asked why the son wrote receipts to his Urdu speaking customers in the English language, the sponsor replied that he did so as people can read and understand English. When pressed as to why the shop would be issuing English language receipts to Urdu speaking customers, the sponsor replied, 'as they have handwritten receipt, writing in English is ok for them'. When asked as to why the receipts from Munir Motors, in relation to the individual payments of twelve separate instalments for the purchase of a motorbike were in the English language, the sponsor accepted that he did not know why but observed, 'it is not difficult English'. When asked why grocery stores had written their receipts in the English language the sponsor accepted that he could not give an answer as he did not have any explanation.
33. Ms Cunha pursued the respondent's concern that the grocery bills evidenced that the appellant was purchasing food for more people than himself. She noted that purchases of milk amounted to, on average, twelve pints every two weeks, and that the appellant was buying substantial amounts of yoghurt and sugar, and significant amounts of rice. The sponsor stated that the appellant was living by himself and was, to the best of his knowledge, eating all the purchased food on his own and using the household products at his home.
34. A receipt of particular interest to the respondent was one from The Shoppe Club issued on 22 July 2020 where two 'nail sets' were purchased, one for PKR 125 and one for PKR 110. Ms Cunha asked whether these were purchased for a woman. The sponsor explained that he himself had been concerned about these purchases and had discussed this matter with his brother on more than one occasion. He was informed by the appellant that a nail cutter set had been purchased and that he had been given the wrong one. When it was pointed out that two items have been bought, the sponsor stated that one was a nail cutter set and the other a nail cleaning set. However, as he detailed in his evidence, he was simply relying upon what his brother had told him and that he accepted that on the receipt both items were identified as a 'nail set'.
35. The sponsor confirmed that his elder sister is married and lives with her family in Pakistan. He is the eldest son and the middle son, Naveed, is married and working in Pakistan. The appellant is the youngest son, and

he is not working. The sponsor confirmed that the appellant secured his LL.B and LL.M from Punjab University in Lahore. The sponsor further explained that the appellant has been unable to pass the Bar exams, having failed them twice. For the last seven or eight years, he has endeavoured to secure employment but has been unable to do so.

36. I asked the sponsor a question about two receipts from Quality Mart which were provided with the Grounds of Appeal to the First-tier Tribunal. They are detailed below.

<b>QUALITY MART</b>				
LIAQAT SHAHEED ROAD, 048-6644281				
Pos 02		Mop :		
Cash Sales				
Receipt # 1078636		Appeal No:		
EA/06480/2021				
Date 05-April-2021 06 28:29 PM				
<b>Sr.</b>	<b>Product</b>	<b>Price</b>	<b>Qty</b>	<b>Total</b>
1	Dalda Cooking Oil 3-Ltr	930.00	1	930.00
2	COCA COLA PET 1L	70.00	1	70.00
3	SPRITE PET 500ML	50.00	1	50.00
4	SURF EXCEL RED	320.00	1	320.00
5	NATIONAL 50G SHAMI	70.00	1	70.00
6	RG DAAL MONG	135.00	1	135.00
7	MITCHEL/POLAC	240.00	1	240.00
8	COLGATE MAXIM	95.00	1	95.00
9	M [Illegible] SHAPE	35.00	1	35.00
10	RO [Illegible]BASMATI	340.00	1	340.00
11	KOLSON VERMICELI	35.00	1	35.00
12	BIC [Illegible]	30.00	6	180.00
13	SAFEGUARD	246.00	1	246.00
14	NESTLE MILK PAK	120.00	1	120.00

15	BAKE/P ELBOW	130.00	1	130.00
16	SUPREME 450GM JAR	510.00	1	510.00
17	SUPER CRISP	50.00	1	50.00
18	COLGATE NAVIGAOR	110.00	1	110.00
19	LIFEBOUY 175ML	195.00	1	195.00
20	COTTON BUDS 100	40.00`	1	40.00
21	LEMON MAX	10.00	5	50.00
		Gross Total	30	3951.00
		<b>Nat Total:</b>		<b>3951.00</b>
		<b>Cash:</b>		<b>4000.00</b>
		<b>Balance</b>		<b>49.00</b>
Sales Person IRF 201				
<p>Thank you for your visit</p> <p>Exchange will be honored within 5 days - plz bring your receipt along No Refund money</p> <p>Candela Retail Solution by Lumen Soft</p> <p>&lt;www.lumensoft buz&gt;</p>				

<b>QUALITY MART</b>				
LIAQAT SHAHEED ROAD, 048-6644281				
Pos 02				Mop :
Cash Sales				
Receipt # 1078639				
Date 05-April-2021 06:30:15 PM				
<b>Sr.</b>	<b>Product</b>	<b>Price</b>	<b>Qty</b>	<b>Total</b>

1	NESCAFE CLASSIC	320.00	1	320.00
2	PANTENE ANTI-HAIR	225.00	1	225.00
3	PALMOLIVE ALOE	65.00	3	195.00
4	COLGATE ZIG ZAG	130.00	1	130.00
5	COLGATE MAXIM	95.00	1	95.00
6	SUPREME 475GM	470.00	1	470.00
7	DEL MONTE MIX FRUIT	280.00	1	280.00
8	UPTON Y/L LEMON	100.00	1	100.00
9	SURF EXCEL [Illegible]	330.00	1	320.00
10	LEMON MAX	10.00	5	50.00
11	[Illegible] HAND	270.00	1	270.00
12	NATIONAL 50GM	70.00	1	70.00
13	ALB DATES DRY 400	115.00	1	115.00
14	BAKE PARLOR ELBOW	130.00	1	130.00
15	Dalda Cooking Oil 3-Ltr	930.00	1	930.00
16	RG DAAL CHANA BIG 1	190.00	1	190.00
17	COCA COLA PET IL	70.00	2	140.00
18	KOLSON VERMICELI	35.00	1	35.00
		Gross Total	25	4065.00
		<b>Nat Total:</b>		<b>4065.00</b>
		<b>Cash:</b>		<b>4100.00</b>
		<b>Balance</b>		<b>35.00</b>
Sales Person IRF 201				
<p>Thank you for your visit</p> <p>Exchange will be honored within 5 days - plz bring your receipt along No Refund money</p>				

Candela Retail Solution by  
Lumen Soft

<www.lumensoft buz>

37. Both receipts originate from position 02 and were issued approximately one minute and forty-five seconds apart. There appear to have been two receipts issued in the meantime, though I accept this may be because receipts were issued from other positions at the relevant time. What can properly be noted is that several items appear on both receipts, for example Dalda cooking oil, Supreme, Coca Cola, Lemon Max, and Bake/Bake Parlor Elbow. The appellant provided no explanation as to why the same items were bought less than one minute and forty-five seconds after a previous purchase of the same items. The sponsor was unable to give any explanation as to the circumstances of these purchases.
38. The Sponsor was provided with a copy of a receipt from Al-Sheikh General and Karyana Store for 8 April 2021, some three days after the purchases at Quality Mart. It appears from this handwritten receipt that the appellant again purchased Dalda cooking oil and Bake Parlor noodles. The sponsor was unable to explain why these items were purchased by the appellant, a single man, for a third time within three days.
39. When asked why the appellant had provided certain receipts from Quality Mart, Farooq Departmental Store, Nawab Cloth House and The Shoppe Club when filing his appeal with the First-tier Tribunal but only provided receipts from Hafiz, Al-Sheikh, Zaka Milk Shop, Munir Motors, Bhalwal Filling Station, Rizwan Electronics and Ehsas Welfare Society when his appeal reached the Upper Tribunal the sponsor stated that his brother keeps all of his receipts in a box and that even now he does not think that his brother has provided the Tribunal with all the receipts that he possesses.
40. In her submissions, Ms Cunha stated that little weight could be given to the receipts written in the English language as there was no coherent explanation from the appellant as to why grocery stores and milk shops would issue receipts in English. Whilst the sponsor had endeavoured to aid the Tribunal's understanding of these receipts, the appellant was silent on the issue. She observed that the appellant is a lawyer, in that he has both a bachelor's degree in law and a master's degree, and he should have known that he would be required to forward all relevant documents to this Tribunal. She asked that little weight be given to the evidence provided, and because of the inconsistencies, the appellant was unable to establish that he was not employed in Pakistan. She accepted, as per the preserved findings of fact, that the sponsor is sending remittances to the appellant, but that such sums were being sent to enhance the appellant's standard of living not to meet his essential needs, which he could himself meet.

41. The sponsor relied upon his evidence and confirmed that he was being truthful as to the fact that he was sending the appellant money every month. He stated his belief, and I accept was honest in doing so, that his brother would prefer to stay in Pakistan and wishes for his elder brother to continue to send money to him because it provides him with an easier life than coming to this country and having to work.

### **Decision and Reasons**

42. I commence by noting the preserved findings of fact from the decision of Judge O'Hanlon, namely that the appellant and the sponsor are brothers, that the sponsor was exercising treaty rights at the date of the application for an EEA family permit, and that the sponsor has been sending remittances to the appellant in Pakistan. It is accepted before me that the sponsor is exercising EEA treaty rights.
43. I have been aided by the sponsor, who I accept has sought to give his evidence in as helpful a manner as possible. It is appropriate that I observe that the sponsor accepted that, as he does not reside in Pakistan, he is unable to personally address all relevant events that have taken place in that country and is reliant upon the information provided by his brother, the appellant.
44. I accept that the sponsor is remitting in the region of £400 per month to the appellant, which is a sizeable sum in light of his monthly income. I accept that it places the sponsor under some financial strain, but as he explained to me, he feels duty bound to look after his youngest brother who lost his mother at a young age and for whom he feels responsible.
45. However, as observed above, I am required to consider as to whether the appellant can establish that he was dependent upon the sponsor at the date of application on 16 November 2020 and in doing so establish that the material support received from his sponsor met his essential needs at that date.
46. Turning to the documentary evidence, I conclude that the appellant has not satisfied the burden upon him to establish the bona fides of the two Quality Mart receipts. He has provided no explanation as to why two separate receipts were issued within one minute and forty-five seconds of each other with several of the same items being repurchased. The concerns as to these receipts are amplified by consideration of the Al-Sheikh receipt purportedly issued three days later where certain items are purchased for the third time. The appellant is silent on this issue and his brother, understandably in the circumstances, has been unable to throw any further light upon the receipts. I am satisfied that the identified concerns with these documents are such that the appellant has not established to the required standard that these receipts were issued to him.

47. The appellant was given notice by my error of law decision that the Tribunal would benefit from an explanation as to why two nail sets were bought at The Shoppe Club on 22 July 2020. The appellant failed to address these purchases in his letter sent prior to the hearing before the Upper Tribunal and it was left to his brother to try to provide an explanation. He explained that his brother had informed him that he had purchased one item, a nail cutter, and he had been given the wrong item. The sponsor was clear in repeating the answer that his brother had informed him that he had only bought one item, and it was the wrong item. I accept the sponsor was endeavouring to aid his brother, the appellant, when he amended his answer to say that the appellant had bought two sets, one containing nail cutters and one with nail cleaners, and I accept that the sponsor did not mean to exaggerate before this Tribunal. I find that after the last hearing, which the sponsor attended, he contacted his brother and sought an answer and received the explanation that one item had been purchased but the wrong item had been given to him. I am satisfied that upon reflection the appellant did not consider such an explanation was sustainable and deliberately did not address it within his letter to this Tribunal, whilst in the knowledge that the Tribunal had concerns about that receipt entry. I am not satisfied, on balance, that the receipt was issued to the appellant.
48. Several receipts have been filed in this matter, many of them handwritten in the English language. I accept that there may well be businesses or dealerships in Pakistan that would issue receipts in the English language where customers would welcome them. However, the appellant has provided no explanation as to why local grocers, vegetable and meat shops, and milk shops would issue receipts in English.
49. The receipts issued by Al-Sheikh regularly run to some fourteen to nineteen items, all written in English and not in Urdu. The appellant's name is written in English as is his address. No cogent explanation has been provided as to why a grocery store in Sargodha, where Punjabi and Urdu are widely spoken, would issue receipts in English. In the circumstances, I am not satisfied to the requisite standard that the Al-Sheikh receipts are genuine.
50. The explanation provided by the sponsor as to why the receipts from Zaka Milk Shop, usually identifying purchases of milk, yoghurt and butter, are written in English is that the owner's son writes his receipts in the English language. No coherent explanation has been provided as to why this is the case in circumstances where customers are content to have receipts written in Urdu by his father. I observe that all twenty receipts relied upon must, on the appellant's case, have been written by the owner's son and therefore on no occasion was he served by the father, who also works at the shop. I consider this to be implausible. Considering the receipts in the round, I am not satisfied to the requisite standard that the Zaka Milk Shop receipts are genuine.

51. I observe that the receipts for petrol are written in the English language, with the dates and the amount of petrol purchased being identified along with the cost. However, not one is signed, which is somewhat surprising when such effort has been undertaken, including the appellant's name being identified on the receipt. On balance, and observing the evidence in the round, I do not accept the Bhalwal Filling Station receipts to be genuine.
52. I am satisfied, having considered the documents in the round, and having noted my concerns as to the receipts issued by Quality Mart, Al-Sheikh, Zaka Milk Bar and Bhalwal Filling Station that the rest of the receipts relied upon are unreliable and in the circumstances the appellant cannot meet the burden placed upon him to the appropriate standard, namely the balance of probabilities.
53. Turning to additional sums entering the appellant's bank account, the appellant contends that the sums were sent to him by a close friend to pay for the health care of their mother. As 'they did not have any bank accounts in Pakistan' the appellant received their remittances into his bank account.
54. I am unable to accept on balance the appellant's explanation for the funds entering his account. He has provided no corroborative evidence as to this assertion, which was made for the first time prior to the hearing of his appeal in the Upper Tribunal, and for which he has had some time to secure corroborative evidence. His evidence is very vague, failing to identify the person sending the funds, the proposed recipient and how he transfers the money to the proposed recipient. As he does not assert that these funds are from his brother in the United Kingdom or another relative in Pakistan, and as he has not established to the required standard that they were funds sent to him to be provided to someone else, I consider that on balance it is more likely than not that the sums are earnings from employment. The appellant is a highly qualified person, whose sister and brother-in-law are working in Pakistan, and no coherent explanation has been given as to why, with a master's degree in law, he has been unable to secure employment, even in the economic circumstances that have existed in Pakistan over recent years. I therefore find to the requisite standard that the appellant was working in Pakistan at the time of his application for an EEA family permit.
55. In the circumstances, whilst I accept that the sponsor has been remitting sums to his brother for some time, I am satisfied that the appellant is employed in Pakistan and so the remittances are sent to enhance his lifestyle and not to meet his essential needs. Consequently, when considering the evidence in the round, the appellant is unable to establish that at the date of application he was dependent upon his sponsor.

## **Notice of Decision**



56. The decision of the First-tier Tribunal was previously set aside for material error of law, with the findings of the First-tier Tribunal at [19] - [21] preserved.

57. The decision is remade. The appeal is dismissed.

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

Date: 30 August 2022

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

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

Date: 30 August 2022