



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

Appeal Number: UI-2022-001324
[EA/06569/2021]

THE IMMIGRATION ACTS

**Heard at Field House, London
On Monday 22 August 2022**

**Decision & Reasons Promulgated
On Tuesday 4 October 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**SHAH RUKH KHAN
[NO ANONYMITY DIRECTION MADE]**

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS

Respondent

Representation:

For the Appellant: Mr E Nicholson, Counsel instructed by Ali & Ali solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of the First-tier Tribunal (Judges Hyland and O’Keeffe) promulgated on 2 November 2021 (“the Decision”). By the Decision, the Tribunal dismissed the Appellant’s appeal against the Respondent’s decision dated 6 March 2021 refusing him a family permit as the extended family member (brother) of an EEA (Spanish) national (“the Sponsor”) under the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”).

2. The Tribunal did not accept that the Appellant is dependent on the Sponsor. It therefore dismissed the appeal on the basis that the Appellant could not satisfy regulation 8 of the EEA Regulations. Although the EEA Regulations have since been repealed, this is a transitional case to which the regulations continue to apply.
3. The Appellant appeals on two grounds. First, it is said that the Tribunal erred in its consideration of dependency. Second, it is said that the Tribunal made unreasonable/flawed findings in relation to the evidence. As Mr Nicholson developed those grounds orally, it was also said that the hearing before the Tribunal was unfair (based on one assertion at [6] of the grounds concerning a wrongful ascription of dishonesty to the Appellant and Sponsor).
4. Permission to appeal was refused by First-tier Tribunal Judge Welsh in the following terms:

“1. The appellant seeks permission to appeal, in time. I conclude that the grounds disclose no arguable error of law, for the following reasons.

2. In relation to ground 1, it is not arguable that the tribunal erred in the assessment of dependency. The tribunal did not conclude that the appellant could not be dependent on the sponsor because the money was paid to the household. Rather, the tribunal found that insufficient evidence had been provided to demonstrate that the money was necessary to meet the essential needs of the appellant. As noted at [26], money can be remitted for many reasons.

3. In relation to ground 2, the tribunal’s observations about the nature of the evidence are relevant. That the appellant lives with his family was only disclosed during the course of the oral evidence and therefore the tribunal was entitled to consider carefully the evidence demonstrating that the money sent was necessary to meet the appellant essential needs as opposed to additional family income. This was particularly so given the very limited evidence about the other sources of family income.”

5. Following renewal to this Tribunal, permission was granted by Upper Tribunal Judge Rimington on 16 June 2022 in the following terms:

“All grounds are arguable.

Although the sponsor in his statement made no reference to the appellant living with his parents the appellant did give same address as his father in his statement. It was found that the family home address was omitted from the appellant’s statement but in fact he gives the same address as his father and there is also a rental agreement. It is arguable that this error (although [16] overall relates to the evidence of the sponsor) may have contributed materially to the judges’ approach to the further evidence.

I can see that the judges found an insufficiency of the detailed picture of finance but it is arguable that when the judges found that ‘the evidence tends to show that the sponsor is supporting the

family home not the appellant's own needs', they failed to appreciate that as a part of the family his dependence may be inextricably bound with that of his family and did not consider the evidence through that lens.

No findings were made on the affidavit of the father and it is further arguable that the rental agreement, which states that the sponsor pays the rent and utility bills, and on which only passing reference was made at [18], does arguably connect the payment of the bills to the sponsor."

6. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle before the First-tier Tribunal ([AB/xx]) and the Respondent's bundle.
7. Having heard submissions from Mr Nicholson and Ms Ahmed, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

DISCUSSION

8. Both grounds of appeal challenge the Tribunal's findings on the evidence. It is therefore artificial to separate them. I consider them together.
9. Mr Nicholson first drew my attention to [16] of the Decision. He submitted that the Tribunal had there taken a point against the Appellant and Sponsor regarding their failure to mention that the Appellant still lives at home in the family house. Mr Nicholson submitted that the Tribunal had there formed a view adverse to the Appellant and Sponsor through which lens it had considered all the evidence.
10. As Ms Ahmed pointed out, however, what is there said had to be read in the context of what precedes that paragraph as follows:

"14. The evidence included with this appeal is largely limited to proof of cash remittances on a quite regular basis since 2016. The appellant and his sponsor claim that these have been to meet the appellant's essential needs. Furthermore, they claim that the remittances were made to their father for the benefit of the appellant, prior to the appellant reaching maturity at 18 years of age.

15. We note that the appellant would have had his 18th birthday on 16th March 2015 and the cash receipts relied upon begin in 2016 and so relate only to dates after the appellant's 18th birthday. However at AB153, is a schedule of Monty Global payments to the appellant and sponsor's father Muhammad Zahoor, which continue until 27th October 2015, being more than 6 months after the appellant's 18th birthday. These are less frequent than those evidenced by the cash transfer receipts after 2016 but nevertheless

cannot be described as occasional, particularly in 2015 when there were 9 payments. In our view, this evidence does not support the assertion that the payments were designed for the appellant when they continued being made to his father for so long after the appellant's birthday. On the evidence before us, we find it is more likely than not that payments continued to the appellant's father after 2015 and were for the benefit of the father rather than the appellant.

16. Of note is the absence of evidence relating to the income and outgoings of the appellant. From the evidence, it appears that he continues to live in the family home. We noted that the sponsor had to be asked 3 times in his oral evidence about who lives with the appellant at the address for which the sponsor is named on the rental agreement at AP50. He then conceded that the appellant lives with their parents in the property. This was omitted from the written statements of the appellant and the sponsor, which we find was an attempt to downplay the fact that the appellant resides in the family home with his parents and to portray his circumstances in a different light."

11. Whilst I accept the point made by Judge Rimington when granting permission and in the grounds that the Appellant gave the same address as his father in his statement, the point being made by the Tribunal is that the Appellant and Sponsor had given the impression in their statements that the Appellant's position viz a viz dependency on the Sponsor after his coming of age was entirely separate from his parents. The Appellant asserted that money was paid to his father for his benefit before he turned 18 but that thereafter he had registered with the money transfer office himself and had received money directly. He says he has no other source of income. As the Tribunal observed, though, payments had continued to the Appellant's father after his eighteenth birthday, and it could not therefore be satisfied that payments up to that point had been made to support the Appellant rather than to assist the family. The point being made at [16] of the Decision leads into what follows because the Tribunal thereafter had to ascertain what were the Appellant's needs as part of the family unit in Pakistan.
12. I do not read the criticism of the Appellant's and Sponsor's evidence read in that context as of central importance. It is merely a backdrop for the findings made thereafter as to what were the Appellant's needs as part of the family unit formed of himself and his parents. For that reason, I also reject Mr Nicholson's submission that the Tribunal acted unfairly by "its ascription of dishonesty" (as it is described in the grounds). The Tribunal was merely making the point that the Appellant's case that he was directly dependent on the Sponsor for his essential needs was not consistent with the factual position namely that he is still living at home with his parents.
13. As the Tribunal observed at the start of [16], there was an absence of evidence about the Appellant's income and outgoings. The Tribunal having found that the Appellant is still part of the family unit thereafter

had to assess the family's circumstances. It did that at [17] to [22] as follows:

“17. It is accepted by both the appellant and the sponsor that their father works as a farmer. They indicated that he is earning a low income, but we have seen no evidence as to the level of that income in circumstances where it could reasonably be expected to be adduced. This is coupled with an absence of any detail of household expenditure such that the two could be compared to establish to what extent those household outgoings could be met by the father's income.

18. Further, we note that the address for the electricity supply has remained the same since at least 2016 and yet the rental agreement runs for a period of 5 years from 3rd February 2017 (AB50). We find it likely that the previous rental agreement at that address was of the same duration. In either case, this adds some weight to our finding that the address is that of the family home of which the appellant is part.

19. Having established that the appellant does in fact continue to live with his parents, we find that it is reasonable to expect that he would be included in any meals prepared by his parents and indeed, in his statement at paragraph 7 (AP5) he himself maintains that he has no other outgoing money. The evidence tends to show that the sponsor is supporting the family home, not the appellant's own needs and it is difficult to see any dependence upon the sponsor.

20. We note that the appellant's name appears first on the electricity bills adduced, and his father's name is also present, but not that of the sponsor. While we accept that the bills have been paid in cash, there is nothing to connect the payment of the bills to the cash remitted by the sponsor, and in any event, this is the family home.

21. We have not been provided with any other utility bills relating to the property, which in our view could be reasonably expected to be provided.

22. We have seen the Pakistan Telecommunication bills which are in the sponsor's name. It might be considered that such a bill does not form an essential needs, but in our view it is not necessary to make a finding on this as again this is an expense that relates to the family home and there is no connection between the payment of these bills and the cash transferred by the sponsor.”

14. I entirely accept the point made by Judge Rimington that if the Appellant is part of a family unit which is dependent for its essential needs on the Sponsor, then that would tend to suggest that the Appellant is also dependent on the Sponsor to meet his essential needs. Ms Ahmed very fairly accepted that if this was the effect of what was said in the last sentence of [18] of the Decision, that might be “problematic”. However, I also accept her submission that this has to be read in the context of the whole of the Tribunal's reasoning and the way in which the Sponsor and Appellant put his case. As she pointed out, the Sponsor did not say that he was meeting the essential needs of the whole family. A finding that

the Sponsor is providing some support for the family home does not amount to such a finding absent evidence that the family is dependent on the Sponsor for its essential living needs.

15. Crucially, as the Tribunal pointed out, there was no evidence about the income of the Appellant's and Sponsor's father nor about the family's outgoings. It is asserted by the Appellant that the Tribunal did not take into account either the father's affidavit or the rental agreement.
16. The father's affidavit appears at [AB/124]. It says the following so far as relevant:

"... I am farmer by profession and I have very small earnings, due to which I am unable to financially support my younger son namely Mr Shahrukh Khan...

It is further stated that my elder son Mr Shah Rome Muhammad Khan, who is residing at United Kingdom is regularly sending money for the financial support, school & college expenses, food etc of my younger son Mr Shahrukh Khan since 2002. From the last 3 years Mr Shah Rome Muhammad Khan is sending money in the name of my younger son Mr Shahrukh Khan, while earlier due to underage issue, he sends money in my name for his expenses.

It is mentioned here that my younger son Mr Shahrukh Khan is still jobless and is depending on his elder brother Mr Shah Rome Muhammad Khan."
17. That affidavit adds nothing to the evidence of the Appellant and Sponsor. As referred to above, the Tribunal had considered the evidence that the Sponsor sent money for the Appellant's benefit to his father until his eighteenth birthday and thereafter directly to the Appellant. That evidence was rejected for the reasons given at [15] of the Decision. The Tribunal also rejected the claim that the Sponsor had been paying for the Appellant's education. It did so due to lack of evidence or lack of cogency of evidence for the reasons given at [23] of the Decision. I have not set that out as the reasoning in that regard is not challenged. What is lacking in the father's affidavit is any detail of the family's income (in particular what are his "very small earnings") and outgoings which, as we have seen, had by that stage become the crucial issue. The Tribunal noted that the Appellant's and Sponsor's father was a low paid farmer but as it observed at [17] of the Decision, it had no evidence about the level of his income or how that matched the family's outgoings. That remains the position taking into account the father's affidavit.
18. The rental agreement is at [AB/49]. The Tribunal referred to it at [18] of the Decision. Mr Nicholson set some store by the fact that the agreement provides for the Sponsor to pay the bills relating to the family home as well as the rent. He asked rhetorically what could be more essential than accommodation and the bills associated with that accommodation.

19. There are two difficulties with that submission. First, although the Sponsor is said to be responsible for payment of the bills, the Tribunal did not accept that he was shown as being the payer of those bills save for the telephone bill (see [20] to [22] of the Decision). Second, and in any event, the Tribunal pointed out that there was no evidence connecting payment of the bills with the cash transferred to the Appellant by the Sponsor ([22] of the Decision).
20. The Tribunal's findings feed into its conclusions at [26] and [27] of the Decision as follows:
- “26. In light of the refusal decision, we are prepared to accept that money may well have been remitted by the sponsor to the appellant in Pakistan. However, money may be remitted overseas for any number of reasons; for example for the maintenance of a property or business concerns or, indeed, to maintain a certain standard of living for individuals overseas. It is for the appellant to establish that the money remitted is depended upon by him to meet his essential living costs rather than for other purposes.
27. We are satisfied that some sums of money have been remitted to the appellant in Pakistan. The appellant has not provided us with information as to his essential outgoings and it is not possible therefore to assess whether or not the sponsor's support is necessary to meet those outgoings. The appellant continues to live with his parents in the family home. We consider that payments are likely to have been to support the family. No link has been provided between the payments made and the utility bills submitted by the appellant which relate to the family home.”
21. For those reasons, which are developed by the Tribunal at [14] to [22] of the Decision as considered above, the Tribunal was entitled to reach the conclusions it did. The Appellant's grounds do not disclose an error of law.

CONCLUSION

22. The Appellant has failed to establish that there is an error of law in the Decision. The Decision is therefore upheld with the consequence that the Appellant's appeal remains dismissed.

DECISION

The Decision does not involve the making of a material error on a point of law. The Decision of the First-tier Tribunal (Judges Hyland and O'Keeffe) promulgated on 2 November 2021 is therefore upheld with the consequence that the Appellant's appeal remains dismissed.

Signed L K Smith
Upper Tribunal Judge Smith

Dated: 24 August 2022