



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Ce-File Number: UI-2021-
001284**
**First-tier Tribunal No:
EA/00395/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 23 April 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

GOLAM SARWAR
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Sponsor, Mr Ahmed, in person.

For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 17 November 2022

DECISION AND REASONS

- 1.** Following a hearing before the Upper Tribunal at Birmingham on 21 June 2022 the decision of the judge of the First-tier Tribunal ('the Judge') was set aside although the Judge's finding that the appellant had not established dependency upon his UK-based EEA national sponsor is a preserve finding as it had not been challenged.
- 2.** The error of law, which was found to be material, related to the decision of the Judge to allow the appeal on the basis the appellant was a member of the EEA nationals household.

3. The matter returns to the Upper Tribunal for the purposes of a substantive hearing to enable a decision to be substituted to either allow or dismiss the appeal.
4. The sponsor Mr Ahmed attended, assisted by a Bengali (Sylheti) interpreter. The appellant was not legally represented but I am satisfied he had the benefit of a fair hearing in which the sponsor was able to engage fully with the proceedings and make such submissions as required on the appellant's behalf.
5. Although the sponsor did not have all the evidence he would have wished to produce I am satisfied his claim to speak to the appellant and to exchange messages on their phones is likely to be true.
6. In the error of law hearing reference was made to the decision of the Upper Tribunal in Sohrab and Others (continued household membership) Pakistan [2022] UKUT 00157 the head note of which reads:
 1. A person seeking recognition as an "extended family member" ("EFM") under regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 must establish a relevant connection with their EEA sponsor in the country of origin, and in the UK.
 2. The relevant connection may be through being a dependent of the EEA national sponsor, or through being a member of the EEA national's household. The relevant connection may change between the country of origin and the UK, as held in Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC).
 3. There must not be a break in dependence or household membership from the country of origin to the UK, other than a de minimis interruption.
 4. To be a member of an EEA national's household requires a sufficient degree of physical and relational proximity to the EEA national through living in the household of which the EEA national is the head, living together as a unit, with a common sense of belonging. There should be a genuine assumption of responsibility by the EEA national for the EFM. Questions of the commencement of the assumption of responsibility and the duration of dependency or household membership are relevant.
 5. An applicant may, in principle, establish a relevant connection to an EEA national in the UK through being a member of the EEA national's household in the UK before the EEA national has arrived here themselves. Such cases are likely to involve putative EFMs who were already members of the EEA sponsor's household in the country of origin.
 6. It will be a question of fact and degree as to whether a person living away from the EEA sponsor's household is to be regarded as having left that household. Relevant factors are likely to include:
 - (a) the duration of the separation;
 - (b) the nature and the quality of the links maintained with the household during the extended family member's time living away;

- (c) whether there was an intention to continue life together as a household, with the EEA national as the head, at the time the putative EFM left;
- (d) the extent to which the departing members of the household have established their own distinct household elsewhere;
- (e) the extent to which there remains a genuine assumption of responsibility (including financial responsibility) by the EEA sponsor for the putative EFMs during the period of physical separation, and any corresponding dependence (including financial dependence) on the part of the EFM;
- (f) the immigration capacity in which the EFM has resided in the UK ahead of the EEA sponsor's arrival.

Discussion

- 7.** The appellant is a citizen of Bangladesh born on 7 May 1993 who made an application on 14 December 2020 for an EEA Family Permit to join his stepbrother, who is also his sponsor, an Italian national living in the UK. The application was refused.
- 8.** The First-tier Tribunal Judge recorded that the evidence at that stage indicated that the appellant joined the sponsor in Italy in either 2017 or the beginning of 2016. The sponsor left Italy in September 2017 after which the appellant remained in Italy.
- 9.** Therefore since September 2017 the appellant and sponsor have not lived in the same household.
- 10.** Considering the issues required to be examined in Sohrab, following a detailed holistic assessment of the evidence, I find as follows:
- 11.** On the face of it there is, a break in membership of the household from September 2017.
- 12.** The sponsor in reply to questions put to him by Mr Bates did not seem to have a detailed knowledge of what the appellant was doing Italy. It is not disputed that even though the sponsor and his wife appear to have visited Italy on at least one occasion, that there is a substantial degree of physical separation as the appellant has remained in Italy and the EEA national sponsor lives in the UK.
- 13.** In relation to relational proximity, a term is often defined in terms of five main 'relational domains' of communication, time, knowledge, power and purpose, as stated there is evidence of some communication between the sponsor and the appellant if his statements to this effect are taken at their highest. What is not known is that the purpose of the communication or content of the same is as that evidence was not made available for the purposes of the hearing.
- 14.** In relation to time, it appears there has been little time spent by the sponsor with the appellant since the sponsor came to United Kingdom. The evidence appears to be restricted to occasional visits by the sponsor to Italy.
- 15.** In relation to knowledge, as noted above, the sponsor appeared to have very little in-depth knowledge of the appellant's personal circumstances and situation, including what qualifications the

appellant was studying for. Mr Bates asked the sponsor about the appellants renewal of his residence card in Italy, but the sponsor was unaware of the basis on which that application had been made. It was noted that whilst it was claimed the appellant was a student, the only evidence was that he had enrolled with an online coaching website for which no further details were provided or known by the sponsor. Similarly the sponsor was able to explain why the current residence card contains specific approval for the appellant to work in Italy. I find the sponsor demonstrated very little knowledge and particularly not to the degree one would expect of an individual forming part of the sponsor's household.

- 16.** In relation to power, there is no evidence that the sponsor has any power or control over the appellant on the evidence.
- 17.** In relation to purpose, the evidence does not support a finding there is any commonality of the arrangements between the appellant and the sponsor, with no evidence of any alignment, shared identity, or anything that one would anticipate would have been present in a close familial relationship in the same household. The evidence suggests the situation is as submitted by Mr Bates that the sponsor has his own independent family in the UK with the appellant continuing to live in Italy. I do not find the required sufficient degree of physical and relational proximity made out on the evidence. Even if the sponsor assumed responsibility for the appellant when he arrived in Italy in 2016/17 it is clear that shortly thereafter, particularly since the sponsor has been in the UK, that any such responsibility is not supported on an ongoing basis evidentially.
- 18.** I find on the evidence that the appellant has not established that he remains a member of the EEA national's household. As the case law confirms this is very much a fact specific question. Duration of the separation is set out above. The nature and quality of links maintained during the time the appellant has remained in Italy do not establish the required level of household membership/bond, it is not made out that there was an intention for continuation of life together in a household at the time the sponsor left Italy to come to the United Kingdom. As noted in the chronology, it was not until shortly before the end of the cut-off date for extended family member applications provided for in the Withdrawal Agreement or Appendix EU that the application was made. It is clear that the EEA national sponsor has established a distinct household in the UK with his family. I do not find there is sufficient evidence to warrant a finding that there is a genuine assumption of responsibility, including financial responsibility, by the EU based sponsor for the appellant during the period of their separation. It is a preserved finding that the appellant had not established financial dependency upon the UK based sponsor, the sponsor appeared know little about the appellant's day-to-day activities and his life, and the weight of evidence in fact points to a genuine separation and lack of evidence of assumption of responsibility in this case.

- 19.** The appellant has not lived in the UK and so the question of immigration capacity in which the extended family member lived in the UK ahead of the EEA sponsor's arrival does not apply, as the EEA national is already in the UK and the appellant wishes to join him here.
- 20.** In conclusion, I find that even though there may be ongoing contact as one would anticipate between relatives living in different countries, by way of telephone/text and/or occasional visits, the evidence does not support a finding that the appellant has remained a member of the EEA national's household and find the appellant has failed to discharge the burden of proof upon him to the required standard to show he is able to meet the requirements of Regulation 8 of the Immigration (EEA) Regulations 2016.
- 21.** In relation to the concerns of the ECO regarding the inability of the sponsor to provide accommodation and maintenance in light of his own circumstances without recourse to the public purse, Mr Bates submitted that if the appellant came to the UK there will be insufficient accommodation meaning he will have to live away from the sponsor and not in his household. Whilst I note that argument the core finding made above is based upon the relationship between the appellant and UK based sponsor's relationship and circumstances as they have existed since September 2017. If the appellant had been able to satisfy regulation 8 then the issue of the sponsors financial situation, which is not great, would no doubt have been considered further pursuant to the exercise of discretion contained in regulation 17(4) in light of the potential burden on the public purse, which may possibly have led to the application being refused on that basis in any event. That is not, however, a matter on which I do need to make any specific finding, and I do not do so.

Decision

22. I dismiss the appeal.

Anonymity.

I make no order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 17 November 2022