



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-002895  
UI-2022-002898  
First-tier Tribunal Nos: EA/06939/2021  
EA/06943/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 4 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**RASHID ANWAR  
KHALID ANWAR  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellants: Ms A Seehra, Counsel instructed by Sharif McKenzie Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**Heard at Field House on 19 January 2023**

**DECISION AND REASONS**

1. The appellants appeal against the decision of First-tier Tribunal Judge M R Hoffman (the judge) promulgated on 14<sup>th</sup> March 2022. The judge dismissed the appeals of both appellants who are brothers against a decision of the Entry Clearance Officer dated 11<sup>th</sup> March 2021 refusing them family permits under Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations).
2. The sole issue before the judge, the respondent having conceded the issue on the relationship, was the dependency on their sponsor.
3. At the hearing the judge accepted the appellants' brother, Mr Murad Ali Khan (referred to variously as Mr Malik and Mr Khan) was a vulnerable witness. Medical evidence disclosed a history of seizures and in December 2020 it was

noted he was known to neurology for a right frontal haemorrhage due to cavernoma with subsequent memory lapse and seizures.

4. The appellants are brothers and citizens of Pakistan. The first appellant, Rashid Anwar, was born on 15<sup>th</sup> October 1974, and the second appellant was born on 28<sup>th</sup> December 1980. Rashid is married and has seven children, whilst Khalid is married and has three children. Both Khalid and Rashid and their families share a house in Swabi KPK along with their parents.
5. The judge set out from [4] to [7] the immigration history including that Rashid had made an application for a family visit visa which was refused on 15<sup>th</sup> August 2007, and on 1<sup>st</sup> February 2008 Khalid made an application for a family visit visa which was refused on 4<sup>th</sup> February 2008. He made a second application on 15<sup>th</sup> December 2008 and a third application on 11<sup>th</sup> January 2010 and both were refused.
6. On 28<sup>th</sup> December 2020 Khalid applied for a family permit as the dependent extended family member of an EEA national, whilst on 29<sup>th</sup> December Rashid applied for a family permit on the same basis, identifying his sponsor as his sister-in-law, Ms Cornelia Alexandrescu.

### **Grounds of Appeal**

7. It was submitted that there was a failure to consider relevant evidence when making findings of fact.
8. Ground 1 - at [40] of the decision the judge erred in law in finding that the remittance receipts in the application all postdated the refusal decision dated 11<sup>th</sup> March 2021. The schedule, however, reflected that some of the remittance payments from the sponsor to the appellants covered the period between 2019 and 2022. The grounds submitted that the remittances commenced on 24<sup>th</sup> January 2019 and approximately only twelve remittances out of 26 remittances were made prior to the refusal. The judge had failed to consider the evidence of long term support and the judge misunderstood and/or misconstrued the evidence and was under a fundamental misapprehension as to the evidence. This was an important error undermining the judge's findings on dependency. The judge noted that not all payments were sent to the appellants but the significance of this was not explained. There was only one payment of £1,000 when taking into account the cancelled payments (ASB 9) and out of 32 remittances sent to Pakistan 25 were sent to the appellants.
9. Ground 2 - there was a failure to consider relevant evidence. At [35] of the decision the judge failed to consider relevant evidence when finding only limited weight could be attached to witness evidence because it had not been referred to in earlier statements.
10. The evidence in issue related to the appellants' home area in Tehsil Swabi KPK with the appellants and witnesses confirming there had been Pakistani military operations against the Taliban from 2007 onwards which destroyed the area and had an impact upon the economy. The judge noted the respondent did not take issue with this evidence and in the circumstances the sponsor and Mr Khan explained that they had started sending financial remittances to their family.

11. The judge was wrong to attach only limited weight to this evidence because it had in fact been referred to at an earlier stage in the grounds of appeal dated 15<sup>th</sup> April 2021 and the grounds contained a declaration by the representative which stated that notice was given in accordance with the appellants' instructions and the appellants believed the facts were true.
12. The grounds of appeal to the First-tier Tribunal confirmed the position in the appellants' home area at [12] that "The Appellant asserts that he is financially dependent on his sister-in-law and brother Mr Khan. He asserts that the terrorist attacks in the area and a Military operation thereafter destroyed most of the city".
13. Ground 3 - there was a failure to consider relevant evidence and a lack of reasoning and unfairness.
14. At [39] of the decision the judge took into account matters that had not been put to the witnesses thereby failing to afford them any opportunity for explanation.
15. When finding that no bank statements were disclosed, the judge failed to consider relevant evidence which explained why the appellants did not have bank accounts. This evidence was considered but the judge provided no reasons for rejecting it.
16. The judge considered there was no breakdown of their income but the appellants' case was always that they had no income, they were entirely dependent on the sponsor for their essential living needs. In the absence of any income the judge failed to reason how a schedule of income and outgoings would have assisted.
17. The judge referred to the limited evidence of telephone and gas bills and the fact that the address and the bills did not match the appellants' given address but at the hearing it was submitted that it was unfair for the respondent's representative to raise this issue for the first time in submissions without having cross-examined the witnesses and thus it was unfair for the judge to place any reliance on this issue when the appellants had been provided no opportunity for explanation. If they had been cross-examined on the issue they would have explained that it was in fact the same address.
18. Ground 4 - the judge confused findings of fact and failed to consider the witness's vulnerability.
19. At [30] of the decision the judge was wrong to place considerable emphasis on peripheral issues such as the location of the witnesses when giving evidence. The fact that works were being done on one property so the couple were living at another property were unrelated to the key question of whether the appellants were dependent on the sponsor.
20. The judge appeared incorrectly to have recorded the witness evidence at [36]. The judge recorded the sponsor's evidence that the appellant Rashid Anwar had previously worked in Dubai. She had also said this would have been for short trips. The judge recorded Mr Khan as stating that he was not sure if Rashid

owned a car and as far as he could remember Rashid had never been out of Pakistan.

21. Mr Khan it appeared had corrected his evidence and after having said “as far as remember he had not been out of Pakistan” then said “I’m not sure - can’t remember whether Rashid gone out”.
22. It would appear that the judge had confused the evidence in relation to the appellants and the fact that Mr Khan had in fact said he could not remember whether Rashid had been outside of Pakistan and not that he had never been outside of Pakistan. The appellants had requested a copy of the transcript to clarify the matter.

### **The Hearing**

23. At the hearing Ms Seehra confirmed that she had attempted to serve a supplementary bundle on the Tribunal in relation to fresh evidence which Mr Whitwell had not received. Mr Whitwell acknowledged that there was an error of law in the judge’s decision at [40] when referring to the remittances because it was clear that some of the remittances did not, as the judge found at [40], “all postdate the refusal decision”. The information on that is outlined in the grounds of appeal.
24. Ms Seehra emphasised the issues in relation to the procedural errors, not least the judge’s references to the sponsor’s husband as Mr Malik when in fact his name was Mr Khan, and further the approach to the evidence considered at [30] in particular in relation to the location of the witnesses which had not been properly explored by the judge at the hearing.
25. Ms Seehra submitted that two findings should be preserved should I be minded to find an error of law. First the concession on the family relationship, and secondly the finding on the use of the tick box where Mr Khan, who had completed the form, had ticked ‘No’ in response to whether the appellants were supported by the sponsor in the application form.
26. Mr Whitwell accepted that the concession in relation to the relationship should be preserved should I find an error of law but objected to the preservation of the finding at [29] in relation to the finding on the sponsor’s mistaken completion of the application. As he pointed out, there were challenges to the procedure in relation to the witnesses’ evidence and it appears to him that the appellants wished to have findings which went against them set aside but those which were in favour of them to be preserved. Bearing in mind the appellants had challenged the decision on the basis of procedural concerns there was no reason that the findings at [29] should be preserved in the circumstances.
27. There were credibility points to be taken and there were clear discrepancies at [30] as to where the home of the sponsor and her husband was and real questions as to that evidence.
28. The judge at [27] identified clearly that the crucial issue was that as to whether the appellants were dependent on the sponsor for their essential living needs.

### **Analysis**

29. Mr Whitwell rightly in my view conceded that the judge had approached the evidence of the remittances incorrectly at [40] when stating that all the remittance receipts in the appellants' bundle postdated the refusal decision which reduced the weight that could be attached to them. That was clearly incorrect as identified above. In the preceding paragraph [39] the judge had stated that "there is still a noticeable dearth of evidence when it comes to the appellants' financial situation in Pakistan" and that "they did not provide a full picture of the families' finances". In the light of those comments the factual errors in relation to the remittance receipts were highly pertinent and the judge failed to assess them properly.
30. Secondly, at the start of [30] the judge stated that he accepted the Secretary of State's submission that the witnesses' evidence must be "approached with caution" and went on to make various observations about the oral evidence given because of the locations from which the two witnesses stated that they were giving evidence. Although Ms Seehra submitted that the finding at [29] in relation to the box ticked on the VAF, was untainted by the oral evidence, the judge recorded "Mr Malik claimed that he had completed these forms but had made an honest mistake in answering this question". There are two points to note. Mr Malik featured nowhere as a witness and if the judge was referring to Mr M Ali Khan that was not made clear. Ms Seehra identified that she did not understand where this reference had come from. Secondly, as set out in the appellant's grounds there was a challenge to the approach by the judge to the witness evidence. It is not clear whether the judge in making the comments at [29] was referring to evidence given orally together with the documentary evidence or merely on the basis of the documentary evidence alone and as the sponsor's husband did give evidence it is likely that the judge used both the oral and the documentary evidence when coming to his conclusion that the tick box was an honest mistake. On the one hand at [33] the judge stated "I am not satisfied with Mr Malik's explanation for the discrepant information given by both he and the sponsor about who was at home" and this was taken against the appellants, and on the other hand the judge accepted that he was "willing to accept that he (the sponsor's husband) made an honest mistake when answering the question". This appears to be contradictory particularly where the judge states at [33] "While this may not go to the core of the appellants' appeal, it is though indicative that the evidence of the sponsor and Mr Malik must be treated with caution". There is no reason to suppose that this does not refer to both the oral and the documentary evidence.
31. I appreciate that the judge overall found that the evidence was significantly lacking in detail when it came to the appellants' circumstances in Pakistan but in view of the difficulties presented by the decision and as set out above in the grounds, I find there were material errors of law owing to the fundamentally flawed approach to the remittances and the cumulative problems with the approach to the oral evidence, not least referring to a witness by a completely different name, (even when assessing that witness's medical condition).
32. The decision should be set aside in its entirety save for the concession specifically clearly made by the respondent and recorded at [18] of the decision. The findings in relation to the application forms (tick box) at [29] and in the remainder of the decision are set aside.

**Notice of Decision**

33. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the procedural errors, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and 7.2 (a) of the Presidential Practice Statement.

**Helen Rimington**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20<sup>th</sup> February 2023**