



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

**Case No: UI-2022-000237**  
**First-tier Tribunal No: EA/07533/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 21 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MOHAMMAD RIZWAN**  
**(no anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Broachwall, instructed by MCR Solicitors  
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 23 January 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 1 December 1985. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with a family permit under the Immigration (European Economic Area) Regulations 2016.

2. The appellant applied for a family permit on 3 December 2020 as the extended family member of the sponsor, his brother Mohammed Irfan Saddique, a Spanish national exercising Treaty rights in the UK. His application was refused by the respondent, initially in a decision dated 22 December 2020 but then in a subsequent decision of 23 March 2021, on the grounds that he had failed to demonstrate that he was financially dependent upon the sponsor. The respondent was not satisfied that the appellant had shown that he was a family member in accordance with regulation 8 of the 2016 Regulations and was not satisfied that he met the requirements of regulation 12.

3. The appellant appealed against the decision, electing to have a papers determination of his appeal rather than an oral hearing. He submitted a bundle of documents for his appeal. The appeal came before Judge Kempton who concluded that the requirements of the EEA Regulations 2016 were not met and accordingly dismissed the appeal in a decision promulgated on 9 December 2021.

4. The appellant sought permission to appeal to the Upper Tribunal against Judge Kempton's decision on the grounds that the judge had erred by requiring the sponsor to demonstrate his circumstances in the UK, which was not a requirement under the EEA Regulations 2016; that the judge had failed to consider the relevant question of whether the appellant was dependent upon the sponsor for his essential needs; that the judge had made a flawed assessment of an electricity bill which had been produced by the appellant; and that the judge had failed to take into account and assess material evidence relevant to the appellant's circumstances and his dependency upon the sponsor.

5. Permission was granted in the First-tier Tribunal and the matter then came before me.

6. Mr Tan did not oppose the appellant's grounds and conceded that there were a large number of documents produced by the appellant which the judge had failed to consider or which she had failed to address in her findings and that the judge had failed to focus on the relevant test of whether the appellant was dependent upon the sponsor for his essential needs. Mr Tan suggested that the appropriate course would be for the case to go back to the First-tier Tribunal to be heard afresh.

7. I reminded the parties that the appellant had not requested an oral hearing before the First-tier Tribunal and therefore enquired why the decision could not simply be re-made by me on the evidence available to me. Mr Broachwall submitted that the appellant ought to be able to be given an opportunity to address the electricity bill which Judge Kempton had found to be unreliable, noting that it was a material piece of evidence going to the question of dependency, and that in view of the passage of time since the First-tier Tribunal hearing there would be further documentation for the court to consider. Mr Tan maintained his agreement to a remittal being appropriate in such circumstances. Mr Broachwell advised me that the appellant would want to pay the extra fee to have an oral hearing for the remitted appeal.

8. In the circumstances, in light of Mr Tan's concession and given the judge's failure to consider, or make findings on, potentially material documentary evidence, and to consider the correct test of whether the appellant's essential living needs were being met by the sponsor, I concluded that Judge Kempton's decision contained material errors of law and had to be set aside. I advised the parties of that conclusion and agreed to the matter being remitted to the First-tier Tribunal for a fresh hearing before a different judge, on the understanding that the appellant would be paying the full fee for an oral hearing.

### **Notice of Decision**

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Kempton.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
23 January 2023