



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

**Appeal Numbers:**

**UI-2022-003083 [EA/10300/2021]  
UI-2022-003082 [EA/10299/2021]  
UI-2022-003078 [EA/10294/2021]  
UI-2022-003080 [EA/10296/2021]  
UI-2022-003081 [EA/10298/2021]**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 7 November 2022**

**Decision & Reasons Promulgated  
On the 23 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**SUMARA [N] (FIRST APPELLANT)  
ABDUL [A] (SECOND APPELLANT)  
TT (THIRD APPELLANT)  
NA (FOURTH APPELLANT)  
NR (FIFTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms C Bayati, Counsel

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

1. The appellants are citizens of Pakistan. The first and second appellants are married and the remaining appellants are their children.
2. On 2 December 2020 the appellants applied for EEA family permits as extended family members of an EEA national. Those applications were refused in decisions dated 31 March 2021. The appellants appealed those decisions and their appeals came before First-tier Tribunal Judge Hussain (“the Ftj”) at a hearing on 24 March 2022 following which, in a decision promulgated on 25 April 2022, each of the appeals was dismissed. The appellants appeal Judge Hussain’s decision to the Upper Tribunal and thus their appeals came before me.
3. The grounds of appeal, in broad summary, contend that the Ftj erred in his assessment of the evidence, made irrational findings and failed to give the sponsor and her husband, who gave evidence before the Ftj, the opportunity to address concerns in relation to particular matters.

### ***The Ftj’s decision***

4. The Ftj summarised the respondent’s decisions which were, to all intents and purposes, the same in the case of each appellant. He identified that the only issue before him was whether or not the appellants were dependants of the EEA national sponsor.
5. He referred to the decisions in each case which stated that although money transfer receipts had been provided, the supporting documents did not demonstrate that any funds sent by the UK sponsor were used to meet the appellants’ essential living needs. Proof of income and expenditure and evidence of the appellants’ circumstances had not been provided.
6. Previous visit visa refusals on 14 December 2015 indicated that there were funds in the sum of over £5,000 revealed in a bank statement of the first appellant. However, neither that evidence, nor a property certificate and a national savings certificate, which had also previously been provided, were presented with the present application. That led the respondent to have concerns about how candid the first appellant was being as to her circumstances in Pakistan. Furthermore, the sponsor in the UK receives various public funds which are all means tested and reflect their low income. Those funds would have been provided to assist the sponsor in meeting their own essential needs and that of their household.
7. The Entry Clearance Officer (“the ECO”) was not satisfied, therefore, that the sponsor would be able to continue to support the appellants should they arrive in the UK. In addition, the sponsor was unable to provide accommodation and a family friend had offered a property that is currently being rented out. This also led the ECO to conclude that the sponsor was not in a position to support the appellants as well as his own household.

8. The Ftj summarised the evidence given by the sponsor, Iraj Tahir, and that of the first appellant's brother, Laiq Tahir.
9. The Ftj referred to regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") and identified the need for dependency of the appellants on the EEA national or spouse exercising Treaty rights in the UK. He said that the appellants needed to show that they depend on the sponsor for their essential needs, and that that could be partial or whole and could also be one of choice rather than necessity.
10. The Ftj's findings were made at [33] - [37] as follows:
  - "33. In this case, whilst the sponsor in paragraph 2 of her statement said "since 2017, We took over the complete financial support of the whole family's needs", by contrast, the first appellant's statement in paragraph 3 seems to suggest that reliance is only partial. Paragraph 4 of this statement asserts that the average monthly amount needed to support the appellants is around 85,000PKR whilst paragraph 3 states that the second appellant's earnings is around 19,000 Rupees. There is therefore an inconsistency between the testimony of the sponsor and the first appellant.
  34. In paragraph 5 of her statement, the first appellant works out that she receives an average of 58,203PKR, which would equate to around £255 in Sterling. The respondent observed that the documents showed that the sponsors in the United Kingdom rely on substantial amounts of public funds to support themselves. In her witness statement, the female sponsor asserts that her husband is no longer in receipt of these benefits. However, the point remains that whilst he may not no be reliant on any benefits now (sic), he previously was, which raises the reasonable question as to how he would have afforded to sent (sic) to Pakistan every month £250 when his own needs here had to be met by the state?
  35. In my judgement, it has not been proven by the appellants that they genuinely received the funds from this country to support their essential needs. Whilst remittance receipts do exist, showing transfer of funds, in my view this is likely to be contrived because it is wholly unreasonable to expect a family of 8 living in the United Kingdom relying on numerous state assistance, to then take on the burden of supporting a family of 5 in a foreign country.
  36. The entry clearance officer also draws attention to the fact that in her 2015 application, the first appellant had a savings of about £5,000. The implication is that being able to amass such a vast amount of money is inconsistent with them requiring financial assistance from the United Kingdom. The appellant's response to this seems to be that this money has now been spent. That may or may not be true, however, the appellant has not explained how she managed to amass this vast amount in the first place, given her husband's low income. The answer to that may be that she used to work as a teacher, however, no evidence has been provided of this nor the amount of her earnings, but significantly,

she claimed that she ceased to be one in 2013. If there is such a vast shortfall between the appellant's needs and the amount of earnings by the second appellant, then in the 2 years between 2013 and 2015, the savings should have been used up.

37. Having looked at the totality of the evidence, like the entry clearance officer, I have come to the view that the appellant has not been wholly candid in relation to her own financial circumstances. It is, in my view, more likely than not that the transfers to her from the UK were made to facilitate their family permit applications."

### ***The grounds and submissions***

11. The grounds of appeal identify that the only issue that was in dispute was that of financial dependence. The grounds argue that the case for the appellants from the time of application for the family permits to the appeal hearing was that they were partially dependent on the sponsor, that the second appellant is employed and receives an income and that their bills and healthcare are covered by his employer. However, because their needs exceeded their income, the sponsor meets the shortfall. Reference is made to the application covering letter and the witness statements provided in support.
12. The grounds contend that the FtJ was wrong to state at [33] that there was inconsistency in the witness statements of the sponsor and the first appellant, because both statements made it clear throughout that the second appellant receives approximately 19,000 Pakistani rupees ("PKR") from employment, that their expenses are on average 85,000 PKR and that the sponsor makes up the shortfall by sending 58,203 PKR month, equating to about £255. It is said that both witness statements speak of being "fully dependent" or "complete financial support". Thus, there is no inconsistency in their accounts and the claim throughout has been that their dependency is partial.
13. In relation to the FtJ's conclusions in terms of how the sponsor's husband would have been able to send money to the appellants in Pakistan when he had been reliant on State benefits to meet his own needs, it is argued that the FtJ had failed to take into account that the sponsor also received enhanced PIP (Personal Independence Payment) which is not means tested. That income equated approximately to the figure that the sponsor sent to the applicants. This, it is argued, was highly material to the overall assessment of whether the appellants were genuinely receiving funds from the sponsor and her husband to support their needs in Pakistan.
14. This argument also has a bearing on the FtJ's conclusion that the appellants had not proven that they "genuinely" received funds from the UK to support their essential needs. Furthermore, the FtJ failed to take into account the documentary evidence of financial support over a considerable period of time, namely from 2018 up to the date of the

hearing. That renders perverse the conclusion that the payments were “contrived”.

15. It is next argued that the Ftj acted procedurally unfairly in his analysis of the roughly £5,000 that the first appellant had in savings at the time of her 2015 application for entry clearance. The sponsor and her husband were not asked any questions about that issue despite it being the sponsor’s evidence that the £5,000 had been spent by 2017, which is when she started supporting the appellants.
16. Related to this last issue is the contention that the Ftj indulged in speculation in relation to those funds. There was no evidence as to what her savings were in 2013 and thus no basis at all for concluding that the savings would have been used up, as the Ftj said, by 2015. In evidence before the Ftj there was nothing to show what the appellants’ needs were in 2013, and bearing in mind that at the time their children were much younger and education fees would have been lower. It was also not known what the second appellant’s earnings were at the time. Furthermore, the evidence that the funds had been used up in 2017 is entirely consistent with the claim that by 2017 she had used up all her savings and that the sponsor started supporting them financially from 2017.
17. In submissions Ms Bayati relied on the grounds which she carefully took me through.
18. In her submissions, Ms Cunha identified the two main issues in the respondent’s decisions, namely that in relation to the £5,000 savings that the first appellant previously had, and secondly the dependency issue in the context of the sponsor’s reliance on State benefits.
19. Although it was accepted on behalf of the respondent that the Ftj did not deal with the issue of accommodation which was raised in the refusal decisions, that was part of the issue of dependency in any event.
20. As regards the complaint about what the Ftj said at [36] in relation to the £5,000 savings, it was up to the appellants to put their case, the matter having been raised in the respondent’s decisions refusing the family permits. The fact is that the evidence in relation to the £5,000 was not put in evidence as part of this application by the appellants. It only emerged as a result of the respondent referring to previous entry clearance applications. The Ftj was entitled to find as he did in relation to that sum of £5,000.
21. The question of the PIP is not in terms of whether or not it is a means tested payment. The issue is in terms of whether the sponsor can survive without recourse to public funds. The Ftj was entitled to question how money could have been sent to the appellants in circumstances where the sponsor was reliant on public funds. All these questions were addressed in the Ftj’s conclusions.

22. In reply, Ms Bayati reiterated that the findings that are made in [33]-[36] are findings that are all challenged in terms of mistake of fact, speculation, or not representing the evidence that was before the FtJ.
23. Furthermore, the issue of the £5,000 was addressed in the witness statements, and to which I was referred. This was the first appellant's witness statement at paragraph 6. However, the FtJ did not raise with the sponsor at the hearing the concerns he referred to in his decision.

### ***Assessment and Conclusions***

24. As regards what the FtJ said was inconsistency between the evidence of the sponsor and that of the first appellant, the FtJ was referring at [33] to the sponsor's witness statement dated 17 January 2022 which at paragraph 2 states that:

"Since 2017, we took over the complete financial support of the whole family's needs. The financial support being provided is essential for them to meet their regular needs and beyond. Whenever there is a maintenance problem we provide her with extra financial support."
25. It goes on to state that the second appellant's salary after deductions amounts to 19,341 PKR which she states is insufficient for the whole family with three growing children. She refers to aspects of the costs that are increasing.
26. At paragraph 3 of her witness statement dated 17 January 2022 the first appellant refers to their living costs and states that there are some months when extra costs are incurred such as when guests come to visit, they need money for food or for travel and that those costs cannot be met solely by her husband's salary, and that to meet the remainder of their day-to-day costs they are "fully dependent" on the sponsor. She refers at paragraph 4 to extra costs such as tuition fees for the children and refers to a record of monthly expenses. Further on in the statement at paragraph 9, she states that she is grateful to her sister-in-law and brother for their continued support and assistance "without whom we cannot meet our day-to-day expenses and we would not have been able to fund our children's studies". Between paragraphs 3 and 4 she refers to her husband's monthly salary of 18,988 PKR and that their expenses range from 62,000 PKR to 89,000 PKR with the average being 85,583 PKR.
27. Having considered the witness statements carefully, it is not apparent that in fact there is inconsistency between the witness statements of the sponsor and the first appellant in terms of the extent of the dependency. That evidence indicates that the financial support provided is necessary because the second appellant's salary is insufficient in itself to meet the family's needs. The sponsor's witness statement, viewed as a whole, in isolation from the sentence stating that they took over the "complete financial support" of the whole family's needs, makes it clear that she was not saying that the appellant's family have no income of their own at all.

28. The respondent's decision refers to the sponsor having been in receipt of public funds, identified in the decision as Child and Working Tax Credits from the Department of Work and Pensions "DWP". The decision states that Child and Working Tax Credits are means tested benefits which are assessed according to a household's income and the household makeup. Thus, the decision continues, they have been awarded public funds due to their low income and their "dependent household". This led the ECO to conclude that the sponsor would not be able to continue to support the appellants should they arrive in the UK.
29. The Ftj deals with this issue at [34]-[35]. He concluded that it was "wholly unreasonable" to expect a family of eight living in the UK "relying on numerous state assistance" to take on the burden of supporting a family of five in a foreign country.
30. Whilst the broad point about public funds is pertinent, it does not appear that either the ECO or the Ftj took into account the evidence that the sponsor was receiving PIP which, as the grounds of appeal to the Upper Tribunal suggest, is not a means tested benefit. In her evidence, when asked how she managed to balance supporting her own family in the UK and five other people in Pakistan she said, amongst other things, that she manages to save her PIP funds. Reference to the PIP is made in the written representations dated 3 December 2020 (in this respect written in the first person in the name of the sponsor) made to the ECO at H6 of the respondent's bundle. The bank statements submitted in support of the application show PIP payments from the DWP at the rate of approximately £238 per month. This is relevant to the rhetorical question asked by the FTJ at [34] of his decision in terms of how funds of £250 per month could be sent to Pakistan when the sponsor's own needs had to be met by the State. In my judgement, the Ftj's decision fails to engage with this specific and important aspect of the evidence.
31. In relation to the issue arising in relation to the first appellant's historic savings of approximately £5,000, I am not persuaded of the merit of every aspect of the grounds of appeal in this respect. If it is suggested that the matter was not raised at the hearing with the sponsor, that is not correct, as can be seen from [22] of the Ftj's decision. Similarly, although the grounds contend that it was not known what the first appellant's savings were in 2013, and thus there is no basis at all for the Ftj to have concluded that the savings would have been used up by 2015, in fact the evidence before the Ftj given by the sponsor was that the £5,000 was "amassed" from the appellant's work which she had to stop after giving birth. She went on to state that the first appellant stopped working in 2013. There was, therefore, a basis for the Ftj's analysis of the likelihood of the funds being used up between 2013 and 2015.
32. Nevertheless, the Ftj's conclusion that the funds would have been used up between 2013 and 2015 because of the "vast shortfall" between the appellants' needs and the amount of earnings the family had, does seem

to me to be speculation in circumstances where, as the grounds point out, it is not known what the appellants' needs were in 2013.

33. Although the Ftj did accept at [35] that remittance receipts do exist, it is not evident from the Ftj 's decision that he took into account the period over which those transfers of funds had been made, from 2018 to 2022 in the context of his conclusion that the transfer of funds "is likely to be contrived" .
34. In the light of the conclusions I have expressed above in terms of significant deficiencies in the Ftj's assessment of the evidence, I am satisfied that the Ftj's decision is vitiated by errors of law. The errors of law are such as to require his decision to be set aside and for the appeal to be remitted to the First-tier Tribunal for a fresh hearing. In deciding that the appeal must be remitted to the First-tier Tribunal, I have taken into account the Senior President's Practice Statement at paragraph 7.2 and the extent of the fact-finding that will be required in considering the appeals afresh.

### **Decision**

35. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Hussain.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the minor appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A.M. Kopieczek

Upper Tribunal Judge Kopieczek

29/12/2022