



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002198  
First-tier Tribunal No: EA/10883/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House IAC  
On the 7 February 2023  
Prepared on 9 February 2023**

**Decision & Reasons Promulgated  
On the 10 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY  
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**MR MUBASHER HUSSAIN  
(Anonymity order not made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Muhammad Tariq Saleem, Sponsor

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

**DECISION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Pakistan born on 21 March 1982. He appeals against a decision of Judge of the First-tier Tribunal Rodger dated 31 January 2022 which was to dismiss the appellant's appeal against a decision of the Entry Clearance Officer dated 29/03/21. On 10/12/20, the appellant had made an out-of-country application for an EEA family permit as an extended family member of an EEA national, his brother, Mr Saleem, the sponsor who is exercising treaty rights. It was the refusal of that application which gave rise to the present proceedings.

### **The Appellants' Case**

2. The appellant argued that he was an extended family member of the sponsor his brother because he was financially dependent upon remittances sent to him by the sponsor. The sponsor told the judge that the appellant used to work in Pakistan in a shop but was not doing so at the time of the application for a family permit and indeed had not worked for the last 5-6yrs. The sponsor confirmed that he, the sponsor, owned the family home that the appellant was living in.

### **The Decision at First Instance**

3. The First-tier Tribunal had three main concerns about the claim of dependency and the evidence given by the appellant in his witness statement and by the sponsor in oral evidence in support of the appellant's appeal. These concerns were: (i) the appellant's ability to work; (ii) the claim of payment of rent for the property the appellant was living in and (iii) the lack of documentary evidence to confirm remittances.
4. In relation to (i) the appellant's ability to work, the judge stated at [20] that there was "no persuasive evidence from the appellant as to why he would not be able to work in his home country or indeed that he has worked in his home country or to show when the work ended as alleged by the sponsor. [The appellant] is aged 39yrs and there is no persuasive evidence that he has not been working or is unable to work in his home country. The sponsor accepted that the appellant had worked in Pakistan and I am not persuaded that this work had stopped or that the appellant is dependent on the sponsor rather than earning his own living in Pakistan."
5. In relation to (ii) payment of rent the judge noted that the appellant had said in his witness statement that the money from the sponsor was used by him to cover the rent on the home. The judge found at [21] that this was not consistent with the evidence of the sponsor that the sponsor owned the house and there was no credible evidence that the sponsor charged the appellant rent to live in the former family home. The judge concluded that the appellant's witness statement as to his financial needs in Pakistan or as to use of the sponsor's money to meet financial needs, was not reliable. The judge rejected the claim that the appellant paid rent to the sponsor in circumstances where the appellant's case was that the sponsor sent money regularly so that the appellant could meet his own costs such as paying rent.

6. In relation to (iii) evidence of remittances, the judge found that there were no money remittance receipts showing that the sponsor was paying money to the appellant into his own bank account from March 2020 (when he opened it). The appellant's bank statements from May 2020 to the end of 2020 showed four financial credits into his account but there was no detail or evidence which persuaded the judge that these came from the sponsor or as to what the money was for. There was evidence of regular remittances in 2021 but this post-dated the refusal decision and came at a time when the appellant was aware that dependency was an issue. The transfers in 2021 did not show genuine dependency but, the judge found were "more likely than not to have been contrived so as to persuade the tribunal that the appellant is dependent on the sponsor. If this had been a genuine dependency situation then there is no credible explanation for the lack of remittance receipts for transfers to the appellant prior to June 2021"
7. The judge concluded at [27]: "overall I am not persuaded that the appellant has proved that he was dependent on his brother at the time of the EEA family permit application or indeed that he is genuinely dependent on his brother at the time of the appeal hearing." He dismissed the appeal.

### **The Onward Appeal**

8. The appellant appealed against the judge's decision on what appeared to be grounds drafted by the sponsor. The grounds asserted that the sponsor was telling the truth when he stated that the appellant was not currently working. The sponsor's oral testimony had been wrongly construed as he had never stated that his brother worked 'sometimes'. The sponsor had been supporting the appellant for a number of years and they collectively formed the basis of a household. The support sent to the appellant was in regards to the appellant's upkeep. At no point did the Sponsor state that the money was used for rent.
9. The application for permission to appeal came before judge of the first-tier Tribunal Dempster on 20 April 2022. In granting permission to appeal she wrote that the grounds amounted to little more than a disagreement with the judge's findings on the specific matters, namely that neither the appellant and the sponsor had mentioned prior to the hearing that the appellant had worked several years previously in Pakistan and that payment of rent by the appellant to the sponsor was inconsistent with the claim of dependency. However the judge had referred to whether the appellant was able to work and as a result it was "arguable that the judge fell into error by factoring into their assessment of the evidence whether or not the appellant was able to support himself by taking up paid employment (**Moneke (EEA-OFMs) Nigeria [2011] UKUT 00341 (IAC)**) thereby making a material misdirection on law". She granted permission to appeal.

### **The Hearing Before Us**

10. In consequence of the grant of permission the matter came before us to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then we would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
11. The sponsor had filed a short bundle before the hearing which inter alia, contained extracts from the decision in **Moneke**. It also contained documents common to the court bundle. In oral submissions, through the court appointed interpreter, the sponsor confirmed that the house in which the appellant was living was indeed his, the sponsor's and he was sending the appellant money for the appellant's upkeep.
12. The presenting officer relied on the brief Rule 24 response and submitted that the burden was on the appellant to show dependency. The judge had directed himself properly. The appeal was merely a disagreement with the determination. We asked the presenting officer to clarify the respondent's position in relation to the point made by the judge granting permission as to the authority of **Moneke**. She replied that the judge had made it clear that the evidence given on behalf of the appellant was neither reliable nor consistent and credibility was in issue. If there was a confusion in the evidence that could be a reason for the judge to find that the appellant's claim had not been made out. In conclusion the sponsor explained the financial arrangements prior to 2021. Until 2018 his wife was living in Pakistan and he used to send money to her to be passed on to the appellant. After she came to United Kingdom he opened an account.
13. At the conclusion of the submissions we indicated that we found that the first judge had given adequate reasons and that the appellant could not meet the test for dependency. For proper reasons the judge had dismissed the appellant's appeal against the entry clearance officer's decision and had not made any material error of law. We indicated to the parties we would give detailed reasons in writing for our decision in due course which we now do in this determination.

### **Discussion and Findings**

14. In order to bring himself within regulation 8 of the 2016 Regulations, the category of extended family members, the appellant needed to show that he was dependent upon his EEA sponsor. The appellant's brother, the sponsor in this case, is an EEA citizen. It was not argued in this case that the appellant and the sponsor lived together in the same household at a time when the sponsor was already an EEA citizen. Although the sponsor referred to the appellant being a member of his household, the evidence before the judge was that the sponsor acquired his Irish citizenship in or about 2014 after he had left Pakistan. Under the authority of **Moneke**, an extended family member can bring themselves within regulation 8 either by showing membership of the same household or by showing dependency.

15. In this case the appellant would need to show he was dependent upon his sponsor in the United Kingdom. There is no geographical limit on where the dependency exists. The difficulty for the appellant is that the judge made certain findings which we have set out above to the effect that he did not accept that the appellant was dependent on the sponsor for the cogent reasons given. He did not accept that the evidence established dependency on the balance of probabilities. That being so the appellant could not bring himself within the meaning of a dependent.
16. **Moneke**, cited by the judge granting permission to appeal confirms earlier authorities and makes clear that financial dependency should be interpreted as meaning that the person needs financial support from the EEA national order to meet his essential needs, not in order to have a certain level of income. The absence of financial documentation to show remittances before the respondent's decision was made, the contradiction in the evidence about the basis on which the appellant was residing in his property Pakistan and the confusion over the appellant's employment undermined the confidence the judge could in the credibility of the case being put forward by the appellant.
17. In **Reyes (EEA Regs: dependency) [2013] UKUT 00314 (IAC)** cited by the judge in the determination, it was held that the test of dependency is not whether a person is wholly or mainly dependent, but whether he or she is reliant on others for essential living needs. The Tribunal stressed that dependency should not be contrived. In the instant case the judge found in terms that the claimed dependency was contrived.
18. Although it is possible to have a dependency of choice and it is not necessary for the appellant to have to show that he was unable to work, the judge in finding that the application before him was contrived rejected the claim that the appellant was not working. It was for the appellant to prove that he was reliant on the sponsor for essential needs. for the reasons given the judge did not find that that had been shown. This case very much turned on its own facts and the appeal in this case was a reasons-based challenge. We find that the judge gave adequate reasoning for his conclusions on lack of dependency and in consequence there was no material error of law.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and we uphold the decision to dismiss the Appellant's appeal

Appellant's onward appeal dismissed

No anonymity order was made at first instance and we make no such order as none was requested.

Signed this 9<sup>th</sup> day of February 2023

.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

As the appeal was dismissed there can be no fee award.

Signed this 9<sup>th</sup> day of February 2023

.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge