



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

**Appeal Number: EA/13128/2021  
Ce-File Number: UI-2022-002918**

**THE IMMIGRATION ACTS**

**Heard at Field House (hybrid)  
On the 7 November 2022**

**Decision & Reasons Promulgated  
On the 19 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA  
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**JEHANGIR KHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr A Chohan, Counsel instructed by Pearl Valley Solicitors  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Herwald, promulgated on 17 February 2022. Permission to appeal was granted by First-tier Tribunal Judge Carolyn Scott on 23 May 2022.

## Anonymity

2. No direction has been made previously, and there is no application nor apparent reason for one now.

## Background

3. On 3 December 2020, the appellant, who is now aged 46, sought leave to enter the United Kingdom as the extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2016. The appellant relied upon his relationship to his brother, Muhammad Zareen Khanbibi, who is a national of Spain living in the United Kingdom.
4. The Entry Clearance Officer (ECO) refused the application because it was not accepted that the appellant and sponsor were related as claimed nor that the appellant was dependent upon the sponsor. In relation to the dependency issue, the following was said:

You state that your sponsor has resided in the UK since April 2014. As evidence of your dependency upon your sponsor you have provided money transfer remittance receipts from your sponsor to yourself dated sporadically from November 2019 to November 2020. This office would expect to see regular and consistent money transfers over a prolonged period of time. As such, this does not demonstrate regular and sole dependency on your sponsor and for this reason I cannot be satisfied that you are dependent upon your sponsor as claimed. It is noted that the corresponding collection receipts or a bank statement in your name have not been submitted to verify any of these funds were received by you. As a result, we are unable to confirm the receipt of any funds and this limited amount of evidence in isolation does not prove that you and your family are financially dependent on your sponsor or that any funds sent to you by him/her were used to meet your essential needs.

Furthermore, the fact of transferring money is not evidence that it is needed by the recipient. We would expect to see evidence which fully details yours and your family's circumstances, such as your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.

Guidance states that financial dependence should be interpreted as meaning that you need the financial support of the EEA national in order to meet your essential needs in the country where you are present - not in order to have a certain level of income. You have not demonstrated that the money you have received is used in any way to support you in meeting your essential needs, as you have not furnished any details regarding your income and outgoings.

## The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, DNA evidence was available which confirmed the relationship between the appellant and sponsor, and

which was accepted by the judge. The judge rejected the claimed dependency owing to concerns as to the credibility of the sponsor.

### The grounds of appeal

6. The sole ground of appeal was that the judge erred in assessing the evidence. The alleged errors were set at paragraphs 5-10 of the grounds.
7. Permission to appeal was granted on the following basis  
*There is an arguable error of law. The Judge relied on the appellant's failure to resume his previous career in 'public service transport' as something which led him to question the credibility of the sponsor and his evidence. It is arguably unclear as to why the Judge determined that the appellant's failure to return to his former career was something which affected the credibility of the sponsor's evidence.*
8. The respondent did not file a Rule 24 response.

### The hearing

9. From the outset, Ms Ahmed advised the panel that the respondent opposed the appeal. Thereafter, we heard submissions from both representatives.
10. In essence, Mr Chohan relied on the ground of appeal and argued that the matters relied upon by the judge in assessing whether the appellant was dependent upon the sponsor were irrelevant. Such matters included that the sponsor left Pakistan in 2014, that the appellant was not intending to come to the UK with his wife and that the sponsor was only supporting the appellant and not his own wife, who remained in Pakistan.
11. Ms Ahmed submitted that the judge was required to assess whether the account provided by the appellant and sponsor was genuine and she drew our attention to a number of aspects of that account which she described as troubling.
12. In reply, Mr Chohan referred to documents in the appellant's bundle including the appellant's covering letter and the sponsor's statement which both stated that the appellant was married. He submitted that it was irrelevant if the funds sent by the sponsor were also used to support others. While there had been no breakdown of the costs of the household, it was open to the judge to ask for this. Mr Chohan accepted that there was no evidence to support the claim that the sponsor's son in Dubai supported the sponsor's wife but said that this was not relevant and if it was, the judge should have asked for it. The appellant's bundle set out the whole circumstances and included bills in the appellant's name and receipts for groceries.
13. At the end of the hearing, we informed the representatives that we found there to be no material error of law with the decision of the First-tier Tribunal. We give our reasons below.

Decision on error of law

14. We conclude that the reasons provided by the judge for rejecting the claim of dependency were adequate and not vitiated by any error of law.
15. We should firstly emphasise that the principal reason this appeal was dismissed was because the judge concluded that the sponsor's evidence was not credible, mainly owing to inconsistencies which emerged at the hearing. We note that the appellant has been professionally represented at the hearing and subsequently. The inconsistencies referred to by the judge are not mentioned, let alone addressed, in the grounds of appeal. Given there is no challenge to those findings, they stand.
16. The judge's particular criticisms of the sponsor's evidence are set out at [15 e-g] of the decision and reasons. Specifically, the judge states at 15(e) that the sponsor was coy in his evidence about with whom the appellant lived. At 15[f], the judge expands, explaining that the sponsor initially said that the appellant lived alone, before stating that the appellant lived in the same house as the sponsor's wife and daughter. The sponsor then stated that the appellant did not live with his wife before stating that the appellant lived entirely alone. The judge records that the words the sponsor used were "nobody else lives there." Ultimately, the sponsor admitted that the appellant's wife did live with the appellant but that the appellant was intending to leave her in Pakistan. We have taken account of Mr Chohan's submission, to the effect that the evidence in the appellant's bundle was consistent in stating that the appellant lived with his wife. Nonetheless, we find that the judge was entitled to accord less weight to the sponsor's account in light of the myriad of conflicting accounts he gave during his oral evidence.
17. At 15[g], the judge sets out the evidence relating to the appellant's lack of employment. The sponsor claimed that the appellant was unable to resume his work driving public service transport because of an accident which left the vehicle unrepairable. The judge asked why the sponsor had not helped the appellant to buy another vehicle and recorded the reply that money was sent but that the vehicle was not purchased because of "the COVID and many other problems." The judge records that the sponsor was not willing to outline what those problems were and went on to claim that the vehicle could not be repaired because of lockdown. Again, the judge cannot be criticised for having concerns as to the veracity of the partial account the sponsor gave, for the first time, at the hearing. The judge then drew the sponsor's attention to 'copious receipts' for diesel in the appellant's bundle however the sponsor claimed that these receipts related to the appellant's personal car.
18. Given that none of the claims made by the sponsor regarding the reasons for the appellant's claimed unemployment were made in the various statements made in advance of the hearing and the number of

inconsistencies involved, we find that the judge was entitled to treat the sponsor's evidence with caution.

19. Lastly, the judge noted the sponsor's evidence that the sponsor's wife and daughter were supported solely by the sponsor's son in Dubai and as accepted by Mr Chohan, he was correct to record at [15(h)] that there was no evidence other than the sponsor's assertion. It follows that even were we to have accepted that the judge made an error of law, it would not have been material to the outcome of the appeal owing to the unchallenged credibility findings.
20. The judge was entitled to take account of the circumstances in which this application for a Family Permit was made. Contrary to what was argued in paragraph 5 of the grounds, it was not irrelevant to the judge's overall assessment that the sponsor had left Pakistan eight years earlier and had elected to be joined by his brother rather than his own wife. At paragraphs 6-9 criticism is made of the judge's comments about the appellant's financial circumstances. To be fair to the judge, the claims about the appellant's loss of income from driving a vehicle were made for the first time at the hearing and there was no presenting officer present to cross-examine the sponsor on these matters. By contrast, the material in the appellant's bundle merely stated that the appellant did not work, without any context being given.
21. The grounds suggest that the judge failed to take account of the sponsor's evidence regarding the appellant's employment and that the diesel receipts were for a personal vehicle. This is simply not the case. At 15(g) the judge refers to the sponsor's evidence on these matters and more in some detail when reaching his overall findings. The grounds, at paragraph 8, criticise the judge for failing to ask the sponsor to elaborate as to why the appellant's vehicle was not repaired. There is no substance to this assertion given that the judge asked the sponsor questions about this matter, not all of which were answered satisfactorily. Lastly, there is a vague suggestion, at paragraph 10 of the grounds, that the judge fell into error in assessing the fact that the appellant lives in a joint family in Pakistan. We could detect no such error. On the contrary, regardless of the appellant's living arrangements, as Mr Chohan admitted, at no stage had any details been provided as to the appellant's personal essential needs. Indeed, this was a matter remarked upon by the ECO.
22. The grounds of appeal amount to little more than disagreement with the judge's findings and do not identify any errors of law, material or otherwise.

## **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is upheld.**

**No anonymity direction is made.**

Signed: T Kamara  
November 2022  
Upper Tribunal Judge Kamara

Date: 11

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email