IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006659

First-tier Tribunal No: EA/04337/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 January 2025

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE SINGER

Between

Hamza Dilmeer Ahmed
(no anonymity order made)

Appellant

and

Entry Clearance Officer

Respondent

Representation:
For the Appellant: Mr Abbas, instructed by Imperium Group Immigration Specialists
For the Respondent: Mr Whitwell, Senior Presenting Officer

Heard at Field House on 6 January 2025

DECISION AND REASONS

1. The Appellant is a national of Pakistan who appeals with permission (granted by Upper Tribunal Judge Reeds) against the decision of First-tier Tribunal Judge Kinch ("the judge"), which dismissed his appeal against the Respondent's decision of 12 August 2020 to refuse to grant him an EEA family permit.

2. The sole issue before the judge was whether the Appellant was genuinely dependent upon his brother and his brother's wife (who is a Polish national) in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2016.

3. The judge found, *inter alia*, that the Appellant had failed to prove financial dependency because, while what she characterised as "ad hoc payments" were made to the Appellant's father to assist with additional expenses as they had

arisen, such as private medical bills, she was not satisfied that the Appellant's day to day expenses were as high as claimed [34], nor was she satisfied that the Appellant continued to incur educational expenses beyond a course due to be completed on 4 August 2019. She also found that there was no evidence before her to suggest that the Appellant's father in Pakistan could no longer afford to provide for him as he had done previously.

4. Permission was granted on the basis that it was arguable that the judge failed to take into account (1) the medical expenses which she should have viewed as expenditure for essential needs, (2) the age of the Appellant in the context of why payments were not made directly to the Appellant, (3) evidence regarding the cost of living in Pakistan relevant to the Appellant's father's pre- and post-retirement position and (4) evidence regarding educational expenses which were arguably inconsistent with other findings made.

5. The Respondent argues that a broad holistic assessment was made of the evidence and on a proper reading of the determination it was open to the judge to conclude (at [34]) that "*the appellant's brother has made ad hoc payments to his father to assist with additional expenses as they have arisen, such as the appellant's private medical bills. I do not find that the appellant is financially dependent on his brother to meet his everyday needs."* The Respondent accepted in the rule 24 response that medical expenses can be viewed as essential needs, but the Respondent did not accept that "ad hoc payments" where private medical bills occur could, in the context of the Appellant's case, be deemed as essential needs.

6. The Respondent also argued that the judge was entitled to find that (i) the brother funding the Appellant's educational courses, additional private education, web design and language courses were not essential needs, especially as these appeared to have come to an end many months before the application was made; and (ii) that there was no evidence that the father's circumstances changed in 2015 (when the sponsor first began sending money). Mr Whitwell characterises the grounds as mere disagreement with the judge's findings and pointed to the judge (at [19]) stating that she had had regard to all relevant material.

7. We have regard to the principles set out in paragraph 2 of Volpi v Volpi [2022] EWCA Civ 464. It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular, as set out in HA (Iraq) v SSHD [2022] UKSC 22:

> (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see AH (Sudan) v SSHD [2007] UKHL 49; at para 30.
> (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see MA (Somalia) v SSHD [2010] UKSC 49 at para 45.

(iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see R (Jones) v First-tier Tribunal (Social Entitlement Chamber) [2013] UKSC 19 at para 25.

8. Upon considering all of the arguments made to us, and applying the above principles, we find that the judge did materially err by failing to have proper regard to the medical evidence. Even if the payments for medical expenses could legitimately be described as "ad hoc", on the judge's own findings that meant that they were paid as and when it was necessary for them to be received on behalf of the Appellant, who was diagnosed with Hepatitis B in 2016 and required vaccinations and treatment, and who had also suffered from severe gastroenteritis and required numerous scans, blood tests and x-rays. The judge accepted that payments for private treatment were consistent with the timeframe (see [26] - [30]). There was some supportive evidence from Dr Imtiaz. At [30] the Judge found that the Appellant's brother made these "ad hoc" payments to the Appellant's father "*to help his father pay for the additional expenses incurred as a result of, among other things, the Appellant's private medical care*" [emphasis added] - notwithstanding that the judge noted that the father had not retired until 31 March 2020. The finding (at [30]) that help was given to the Appellant's father to meet medical expenses was, we find, inconsistent with the findings (at [22] and [34]) that the judge was not satisfied that day-to-day expenses could not be (and had not been) met by the Appellant's father; (unless the Judge was improperly discounting the private medical treatment from the dependency assessment). Given the Appellant's age and circumstances, and the patriarchal nature of society and family relationships in Pakistan, there is nothing remotely untoward in the remittances being sent to his father.

9. We also find that the judge materially erred in law by failing to have proper regard to the evidence regarding the UK based sponsors funding numerous educational courses for the Appellant. These were noted by the judge but then, we find, taken out of the consideration of dependency (at [33]) on the basis that it appeared that all the courses had come to an end. Even if they had been completed, the judge should have considered the evidence of funding these courses as part of a broad holistic overview of whether there was dependency in whole or in part. The judge also should have asked whether the Appellant's father could have paid for these courses and the medical treatment without help, given his income had dropped from approximately 39,000-40,600 PKR net per month (when employed) to a monthly pension income of 27,745 PKR (upon retirement). There was a schedule before the Judge of the cost of living for a person in Gujranwala, (at pages 192-200 in the final bundle, which was at pages 152-159 of the Appellant's bundle before the judge), that was calculated at 53,704 PKR; this would have assisted the judge in answering this question - and which Mr Whitwell acknowledged in his submissions to us was not specifically referred to by the judge in her analysis of dependency.

10. We also note that Mr Whitwell did not dispute (and neither did the Rule 24 response) the assertion in the grounds that oral evidence was given at the hearing regarding the Appellant undertaking a short course for Microsoft, which had been paused due to the effects of the pandemic. The reference to this (at [13]) was, we find, inconsistent with the judge's finding (at [33]) that there was

no evidence to confirm that the Appellant had continued in any educational courses beyond 4 August 2019.

11. We find that these errors were material and the decision is set aside. On the judge's own findings, and looking at all of the evidence in the round, we are satisfied that the Appellant genuinely needed additional help, both before and after his father retired, to meet his essential needs, which included assistance with paying for private medical treatment and educational courses. Applying the principles in ECO Manila v Lim [2015] EWCA Civ 1383 and Reyes v Migrationsverket (Case C-423/12), we find that the Appellant was not and is not financially independent and he needs the assistance given by his brother and sister-in-law to meet his basic needs.

Notice of Decision

12. The decision of the First-tier Tribunal is set aside.

13. The decision is re-made as follows: the appeal is allowed.

Richard Singer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14.1.25