



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03470/2019 (P)

**THE IMMIGRATION ACTS**

DECIDED UNDER RULE 34

Decision & Reasons Promulgated  
On 24 August 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MANSOOR NAZIR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISIONS, REASONS AND DIRECTIONS (P)**

1. The appellant, a national of Pakistan with date of birth given as 30.10.80, has appealed to the Upper Tribunal with permission against the decision of the First-tier Tribunal promulgated 4.12.19, dismissing his appeal against the respondent's decision of 8.7.19 refusing his application made on 26.2.19 for an EEA Residence Card, pursuant to Regulation 8 of the Immigration (EEA) Regulations 2016, as the extended family member of his maternal first cousin, Nasreen Akhtar (the sponsor), a Norwegian citizen, exercising Treaty rights in the UK.
2. The application was refused because the respondent was not satisfied that the appellant had been dependent on or residing with the sponsor before he came to the UK and that since then he had continued to be dependent on or resident with her, as required by the Regulations.
3. For the reasons set out in the impugned decision, the First-tier Tribunal panel concluded that the appellant failed to demonstrate both prior

dependence/membership of household and present dependence/membership of household.

4. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 15.5.20, on the basis that it was arguable that the First-tier Tribunal materially erred in misunderstanding the evidence "*particularly with respect to payments said in the Decision and Reasons to have been paid by Javid Akhtar. There is less merit in other grounds, but permission is nevertheless granted.*"
5. On 2.7.20 the Upper Tribunal issued directions proposing that the error of law issue should be decided on the papers without a hearing and provided for further written submissions.
6. There has been no response from the appellant to the directions. On 21.7.20, the Upper Tribunal received the respondent's submissions, drafted by Stephen Whitwell, Senior Presenting Officer.
7. I have had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal*, to the *UTIAC Presidential Guidance Note No 1 of 2020, Arrangements during the COVID-19 pandemic*, and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), and to the views expressed by the parties, neither of which has objected to the error of law issue being decided without a hearing. The grounds of application for permission to appeal are clear and a sufficient statement of the appellant's case on appeal against the decision of the First-tier Tribunal. I note that the directions were sent to the appellant's registered legal representatives by email on 2.7.20. There is no explanation for the absence of response to the directions from the appellant and the Tribunal's case file discloses no recent correspondence from or on behalf of the appellant, even to acknowledge the grant of permission or the directions. I am satisfied that the appellant has been given an opportunity to express a view as to whether the error of law issue can be dealt with without a hearing and to make any further submissions. In the premises, I am satisfied that it would be consistent with the Tribunal's overriding objectives to deal with cases fairly and justly to determine the appeal on the papers without a hearing and on the basis of the written submissions summarised above.
8. Whilst I have given careful consideration to the respondent's written submissions, I note that they were prepared without access to the Home Office file or the evidence put before the First-tier Tribunal at the appeal hearing. Having considered the written decision of the Tribunal, the grounds of application for permission to appeal, and the evidence in the appellant's bundle, I find that the appellant is correct in identifying an error at [20] and [21] of the decision. There, in examining the evidence in relation to remittal of funds to the appellant in Pakistan, the prior dependency issue, the First-tier Tribunal panel stated that all payments to the appellant's bank account in

Pakistan made between 3.4.09 and 3.2.11 “were paid by Javid Akhtar in Norway, not the sponsor. His relationship to the appellant or to the Sponsor was not explained.”

9. If the First-tier Tribunal was referring to the remittance documents between 179-195 of the appellant’s bundle, there is no ‘Javid Akhtar’ on any of those documents, before or after 2011. The sender is listed either as ‘Nasreen Akhtar’ or ‘Nasreen Javaid’. An examination of the preceding bank statements refers to transfers from either ‘M Nazir’ (likely to be the appellant’s brother) or ‘N Akhtar’. The appellant’s case is that ‘Nasreen Akhtar’ and ‘Nasreen Javaid’ is the sponsor and the change of name reflects the name change on marriage. The marriage explanation does not entirely make sense on the limited evidence available. The birth document for the sponsor gives her name as ‘Nasreen Akhtar’. Her citizenship documents show the name ‘Nasreen Javaid’ and her marriage certificate in the UK, dated 3.8.15, shows ‘Nasreen Akhtar’ married ‘Maqsood Nazir’, the appellant’s brother. It does state that her previous marriage was dissolved and thus it may be that her previous married name was ‘Nasreen Javaid,’ which is consistent with [9] of the appellant’s witness statement, which states that after marriage to Muhammad Javid, she relocated to Norway in 2009. However, it is not clear whether the name changes on the remittal documents are consistent with the name given in the remittance documents, which changes from ‘Nasreen Javaid’ to ‘Nasreen Akhtar’ between February and June 2013. The sponsor’s unsigned and undated witness statement confirms the marriage to Muhammad Javid but it is not clear from the available evidence when this relationship ended.
10. The appellant’s bundle was very poorly prepared, and the documents are not very well organised or laid out. For example, the sponsor’s statement is indexed as being the statement of the appellant’s partner. Further, many of the banking documents are not in chronological order and some are copied upside down. It should not have been necessary for the First-tier Tribunal and for me to spend a good deal of time trying to unravel the evidence. It may be that this poor preparation of the appellant’s case led the First-tier Tribunal into error as to the sender of funds. Comment was made at [22] of the decision as to the difficulty of interpreting the Halifax statements for the sponsor set out in the appellant’s bundle. Although the grounds challenge the Tribunal’s findings at [22], after considering the material myself, I am satisfied that those comments were well made and open to the Tribunal, disclosing no error of law.
11. Nevertheless, I am satisfied that the First-tier Tribunal was mistaken in suggesting that the funds between 2009 and 2011 were sent to the appellant by ‘Javid Akhtar.’ It follows that the First-tier Tribunal was in error of law in finding no evidence of financial support from the sponsor to the appellant

prior to his arrival in the UK from Pakistan in April 2011, as there are remittances from Norway in the name of 'Nasreen Javaid' prior to that date.

12. However, in order for the appeal to the Upper Tribunal to be able to succeed, the appellant has also to demonstrate that any error is material to the outcome of the appeal. The First-tier Tribunal rejected both aspects of the appellant's dependency claim, prior to his arrival from Pakistan in April 2011 and thereafter. Both elements of the requirement of Regulation 8 need to be met for the appellant to be entitled to an EEA Residence Card as an extended family member.
13. I have, therefore, carefully considered the impugned decision in the light of the other grounds of application for permission to appeal. At [4] of the grounds it is submitted that the First-tier Tribunal erred in taking into account irrelevant considerations, referring to the comments made at [26] of the decision about the similarity of the two tenancy documents. However, the grounds are incorrect when they suggest that the Tribunal found a similarity "to the trained eye." What the Tribunal actually referred to was that despite their being different landlords, there was a similarity "to the untrained eye," in other words on the face of the documents without any need for expert examination or opinion. The Tribunal also pointed to other concerns about this documentation, including the length of the tenancy, the incomplete nature of the documents. Whilst the appellant had given a partial explanation that one address belonged to a 'friend,' it was entirely open to the Tribunal to conclude that little weight could be given to those documents and no error is disclosed at [26] of the decision.
14. I note in this regard that the sponsor did not attend the appeal hearing heard on 14.11.19, despite a lengthy adjournment to enable the appellant's representative to consider whether to seek an adjournment for her to attend and sign the draft witness statement, given that the respondent had put credibility in issue. The Tribunal noted at [9] of the decision that a statutory sick pay certificate was produced, stating that due to neck pain she was unfit for work until 21.11.19. However, that did not justify the sponsor's absence from the hearing, stating only that she was feeling tired and stressed. At [11] of the decision, the Tribunal considered the medical evidence relating to the sponsor contained within the appellant's bundle but concluded that it did not show that she was unfit to attend the hearing or give evidence. The Tribunal concluded that she could have attended but had not done so, even though she could have travelled to the hearing from her home in Ilford to the hearing centre. In the circumstances, the Tribunal was entitled to give limited weight to the sponsor's statement and did not have the sponsor present to explain or support the appellant's case.
15. The final ground of appeal relates to [27] of the decision, where the Tribunal noted that the appellant's wife did not provide any evidence, whether written or oral. The Tribunal had already noted its concern about the silence in the

evidence as to the position of his wife subsequent to expiry of his leave to remain as her dependent, as well as the absence of documentary evidence to support the proffered explanation for monies in his bank account in September 2014, some 2 ½ years after he came to the UK as his wife's dependent, and to support his explanation as to how his witness statements were funded.

16. Whilst at [5] the grounds suggest that at [27] the Tribunal erred in "failing to explain why he rejected the Sponsors medial evidence for her absence when arriving at the finding that she did not provide any evidence," the ground is misconceived as [27] referred to the absence of evidence from the appellant's wife, not the sponsor. It has to be borne in mind that the appellant was the only live witness at the appeal hearing and neither the sponsor nor the appellant's wife attended to support his case. The fact was that even if the appellant's wife could not attend, which is far from clear, a signed and dated witness statement could have been provided but was not.
17. It follows from the above that the findings of the First-tier Tribunal in relation to the issue of dependency/membership of household in the period after the appellant arrived in the UK from Pakistan in April 2011 disclose no error of law. In essence, the grounds in this regard are no more than a disagreement with the decision and an attempt to reargue the appeal. At [29] of the decision the Tribunal concluded that the appellant himself was not a reliable witness and was entitled at [29] to note the absence of any reference to specific matters in the sponsor's unsigned statement. In the premises, the Tribunal was entitled to conclude that "even if the sponsor had contributed to the support of the appellant, there is no evidence of any dependency beyond the mere receipt of money." At [30] the Tribunal was entitled to give reduced weight to the documentary evidence and conclude that the appellant had failed to discharge the burden of proof. No error of law is disclosed.
18. In the circumstances, although I have identified an error in the decision, it is clear that the appeal could not and would not have succeed even had that factual error not been made as the appellant failed to discharge the burden of proof in respect of present dependency as required under Regulation 8. The error was not material to the outcome of the appeal.

### *Decision*

19. For the reasons set out out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



**Signed *DMW Pickup***  
**Upper Tribunal Judge Pickup**

**Dated 19 August 2020**