



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02263/2020 (V)

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams
On 30 July 2021

Decision & Reasons Promulgated
On 18 August 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR SHAMEEL ARSHI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Maqsood, Counsel instructed by Lamptons solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Plumtree promulgated on 23 February 2021 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 2 October 2019 refusing the Appellant a family permit to join his brother (“the Sponsor”) in the UK. The Respondent’s decision is made pursuant to the European Economic Area Regulations 2016 (“the EEA Regulations”). As a transitional case, the appeal is unaffected by the United Kingdom’s departure from the European Union. I was informed by the Appellant’s Counsel that the Sponsor remains living in the UK and has permission to do so under the EU Settlement Scheme.

2. The Appellant is a national of Pakistan. The Sponsor is a Spanish national. The Appellant claims to be entitled to a family permit on the basis that he is now and has been in the past dependent on the Sponsor. He therefore claims to satisfy the definition in the EEA Regulations of an extended family member.
3. Judge Plumptre accepted that the Appellant had shown dependency after 2016 but not that he had done so at any earlier date. She did not accept that the funds sent by the Sponsor were for the Appellant's sole use. She dismissed the appeal for those reasons.
4. The Appellant appeals on four grounds. Those are that the Judge has materially misdirected herself in law, has reached a perverse conclusion and has taken into account immaterial matters.
5. Permission to appeal was granted by Upper Tribunal Judge Martin as a First-tier Tribunal Judge on 9 April 2021 in the following terms:

“..2. It is arguable that, the Judge having found at paragraph 12 of the Decision and Reasons that the sponsor financially supported his parents household, which included the appellant, that ought to have been determinative of the appeal in the appellant's favour.”
6. Although the Respondent filed and served a Rule 24 reply dated 6 May 2021, seeking to uphold the Decision, Mr Walker indicated at the outset of the hearing that he no longer resisted the appeal. The Respondent was content that there was an error of law in the Decision disclosed by the grounds, and that the Decision should be set aside. Mr Walker confirmed that, based on the findings made by Judge Plumptre (to which I come below), the Appellant's appeal should be allowed as those findings were sufficient to satisfy the EEA Regulations.
7. I therefore indicated that I found an error of law in the Decision, set it aside and re-made the decision in the Appellant's favour. I indicated that I would provide my reasons in writing which I now turn to do.

DISCUSSION AND CONCLUSIONS

8. The relevant paragraphs of the Decision setting out the evidence before the Judge and her findings are at [9] and [11] to [16] of the Decision as follows:

“9. The sponsor stated that the appellant brother has never worked in Pakistan, does not have a bank account and lives in the family home with his parents. He said that no member of the household had any source of income. He confirmed that his father Mohammed Nawaz born 01 January 1994 [sic] and aged 77 years used to be a farmer but the farm had been lost due to erosion in approximately 1999. His mother Razia Baigum was born on 01 January 1947 and is aged 74 years. In cross-examination the sponsor confirmed that the family did own the farm but it had been taken away/lost by erosion. His brother had never worked on the farm. His

brother was educated up to the equivalent of GCSE standard. The sponsor confirmed his parents owned the family home and that they did not have to pay rent but only utility bills. The sponsor confirmed that he was married with his wife and child living in Pakistan who live with his in-laws some 5-7 kilometres away.

...

11. I find that the Presenting Officer rightly relied on **Dahoo v SSHD [2012] UKUT 70** which set out that a person can establish that he is an extended family member in one of four ways. **I find that the appellant has not established dependency prior to 2016.** Whilst I accept that the appellant and sponsor brother lived in the same household from 1991-2000 when the sponsor left Pakistan to work in Spain, I find that there is no evidence to establish the appellant's dependency on his brother for the first nine years of his life as he states in paragraph 5 of his witness statement. I note that the appellant says that his brother has been providing him with financial support since his arrival in Spain 2000 but give weight to the fact that there is no evidence other than oral that he did so and no documentary evidence of any remittances to Pakistan between 2000 and 2015.

12. I give weight to paragraph 7 of the appellant's witness statement that the sponsor brother has historically provided funds to any of the household members who then give him cash. **I find that the evidence shows that the funds transmitted to Pakistan in recent years are consistent with maintaining both the parents who are elderly and to some extent the appellant and in effect meets the living expenses of the family.**

13. I have considered Mr Maqsood's submission that the evidence about land erosion and the loss of the family farm is unchallenged and that **at paragraph 9 of the appellant's witness statement he sensibly acknowledges that some of the transfers between 2017 and 2020 have included funds for his parents and their living expenses as well as for himself.** However I give weight to the fact that there is no mention of the family farm being lost to erosion in the appellant's witness statement.

14. I find the schedule of living expenses at page 50 showing 9,500 rupees on food, 3,500 rupees on utility bills, 3,500 rupees on medication, 700 rupees on phone bills, 2,000 rupees on transport and 2,100 rupees on other/miscellaneous totalling 21,300 rupees equating to £100 does not greatly assist me since **it is unclear which of these expenses relate to the parents' living expenses and which relate to the appellant. I find that these are household expenses rather than personal to the appellant brother.**

15. I find as rightly submitted by the Presenting Officer that the appellant has not established dependency on his sponsor brother and that **insufficient evidence was provided of this particularly during the earlier years ie between 2000 and 2015.**

16. It is to the credit of the sponsor that he sends money to his family in Pakistan given his meagre earnings in the UK. However as stated earlier **I find that the evidence of funds transmitted can equally be for the support of his elderly parents and not necessarily for his brother and find that evidence of the appellant's brother's dependency on the sponsor has not been established on the balance of probabilities."**

[my emphasis]

9. That passage and particularly the sections emboldened disclose the following errors:

(a) The Appellant needed to show past and present dependency, but he did not have to show that dependency had been continuous in the period since the Sponsor left Pakistan. It was sufficient for dependency to be shown from 2016.

(b) The Appellant did not have to show that the funds sent by the Sponsor were for his sole use. The issue was whether the Appellant was dependent on the Sponsor not whether their parents were also dependent.

(c) It might have been open to the Judge to find that the Appellant was not dependent on the Sponsor if, for example, she had found that the Appellant earned income from the farm (having not accepted that the family farm had been lost) but there is no such finding.

(d) The Judge has failed to consider that the Appellant is part of the same household as his parents and accordingly the fact that the evidence was of funds sent being used for household expenses also disclosed a dependency of the Appellant.

10. Having found that the funds sent were used for household expenses which included the expenses of the Appellant, that the funds were used "to some extent" to support the Appellant and having failed to identify any other source of income on which the Appellant could rely, the Judge should have allowed the appeal. The Appellant did not have to show that the funds were sent for his sole use. It was enough that they were used to support the Appellant as well as his parents.
11. For those reasons, and as conceded by the Respondent, I conclude that the Decision contains an error of law and should be set aside (whilst preserving the findings of fact made about the evidence as those are not challenged). As also conceded by the Respondent, I conclude that the Appellant's appeal should be allowed.

DECISION

I am satisfied that the decision of First-tier Tribunal Judge Plumtre promulgated on 23 February 2021 discloses an error of law. I set aside that decision (whilst preserving the findings of fact made on the evidence). I re-make the decision. The Appellant's appeal is allowed under the EEA Regulations.

Signed: *L K Smith*
Upper Tribunal Judge Smith

Dated: 3 August 2021