



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04910/2019 (P)**

THE IMMIGRATION ACTS

**Determined on the Papers at Field House
On 4th December 2020** **Decision & Reasons Promulgated
On 09 February 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR SHABIR HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

Written submissions:

For the appellant: Ms Rutherford instructed by Law and Justice Solicitors

For the Entry Clearance Officer: Ms J Isherwood, Senior Home Office
Presenting Officer

The appellant appeals against the decision of First-tier Tribunal Judge Bird promulgated on 17th March 2020 which dismissed his appeal against the Secretary of State's refusal to grant an EEA family permit as the extended family member of the sponsor, Mr Arif Mohammed.

The application was refused on 2nd August 2019.

The appellant failed to provide any evidence to confirm that he was the brother of the EEA sponsor and evidence that he had been a dependant on the EEA sponsor. He therefore did not meet Regulation 12 of the Immigration (European Economic Area) Regulations 2016.

The grounds submitted that the appellant is a citizen of Pakistan. The judge accepted that there was evidence of financial remittances being sent but concluded that the sponsor was not a credible witness and had manufactured the application. It was submitted that in making that finding the appellant and sponsor had been untruthful. It was advanced, however, that the judge failed to consider all of the relevant evidence and had given inadequate reasons. Judge Aziz had simply rejected the sponsor's explanation as to why the brother's circumstances had changed. The sponsor gave full evidence and explanation as to his circumstances and the appellant's personal circumstances which had changed since his 2010 visa application, namely that he could not remain living in his own property as he could no longer rely on his land to provide him with an income and could not sell it.

The grounds acknowledge that the judge did not have to refer to every piece of evidence, but the judge was required to consider all relevant evidence and the determination did not demonstrate that the judge had done so. For example, the judge did not consider the evidence given that his own property, despite the sponsor's property being in the same village, was sometimes being caught in the shelling it was safer than the appellant's own property.

It was submitted when his sole reason for rejecting the appellant's claim to be financially dependent on his brother was due to his rejection of the reason for the change in the appellant's circumstances, he was required to consider all the evidence given including the explanation why the appellant had moved to his brother's house. The judge needed to give reasons which engaged with all of the evidence.

Directions were issued in the light of the pandemic as to the form of hearing to be adopted to determine the error of law, and, in response on 16th July 2020 the Secretary of State, having considered the grounds, accepted that the judge materially erred in law, namely that the judge did not consider the evidence regarding the change of circumstances since 2012 and whether the appellant was now dependent on his sponsor.

At paragraph 33 of the decision the judge merely stated:

"However, I did not find persuasive the EEA sponsor's explanations as to 'why' and 'how' his brother's circumstances changed in 2012. In turn, I was not persuaded that an accurate picture was being given regarding how the appellant financially supported his wife and seven children in Pakistan."

The judge merely proceeded at paragraph 34 to state: “It does not seem credible that he would relocate his family a mile away to another part of the village where his brother lived.”

Although the judge stated that on the EEA sponsor’s own account his house was also at risk of being shelled the grounds submitted the judge did not consider that, notwithstanding that the sponsor’s property may be at risk, it was still safer than the appellant’s own property.

In response to the Home Office’s submissions on 22nd July 2020, Ms Rutherford, Counsel for the appellant, noted that the Secretary of State accepted that a material error of law was identified in the decision of Judge Aziz and on the basis that a material error of law was identified by the Upper Tribunal the appellant she stated she “has no objection to that issue being determined on the papers”. She submitted that the entire determination needed to be set aside owing to the material error of law and the matter as to whether the appellant was dependent on his brother, who is the EEA national sponsor, should be redetermined by the First-tier Tribunal and that the matter should be remitted forthwith.

As to Rule 34, I have considered whether the decision on the error of law is suitable to be considered on the papers. I have taken into account the submissions of both parties and this decision is made subject to the Senior President’s Direction 2019 and following the decision in Joint Council for the Welfare of Immigrants and the President of the Upper Tribunal (IAC) and The Lord Chancellor [2020] EWHC 3103 (Admin). Bearing in mind the submissions of both parties that the matter should be remitted to the First-tier Tribunal there is no prejudice to the same.

From the submissions made by both parties I find that the judge failed to consider relevant material and there is a material error of law in the decision of the First-tier Tribunal.

I set aside the decision of First-tier Tribunal Judge Aziz owing to a material error of law, I preserve no findings and the matter will be remitted to the First-tier Tribunal for a hearing de novo.

No anonymity direction is made.

Signed Helen Rimington
Upper Tribunal Judge Rimington

Date 27th January 2021.