



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06442/2019

**THE IMMIGRATION ACTS**

Heard at Bradford (via Skype)  
On 10 March 2021

Decision & Reasons Promulgated  
On 18 March 2021

Before

**UPPER TRIBUNAL JUDGE HANSON**

Between

**SHAWINDER SINGH**  
(Anonymity direction not made)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Brown instructed by First Law Solicitors.

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of a panel of the First-tier Tribunal ('the Panel') promulgated on the 12 October 2020, which dismissed the appellant's appeal against the respondent's refusal to grant him a Residence Card in recognition of a right to reside in the UK as an Extended Family Member (EFM), the nephew, of an EEA national exercising treaty rights in the United Kingdom.

## **Background**

2. The appellant is a citizen of India born on 3 February 1991 whose EEA national sponsor is his uncle, Gurwinder Singh, an Irish national.
3. Having considered the documentary and oral evidence the Panel set out their findings from [13] of the decision under challenge.
4. It is not disputed the appellant now lives with his sponsor and his family in the UK and that the sponsor transfers £150 per month into the appellant's bank account for his use. The Panel were informed in evidence that the appellant cannot work and spends all his time at home and is therefore wholly dependent on his uncle. The Panel find the appellant has been dependent on his sponsor from 2015 to date [14].
5. The Panel note that prior to moving to the United Kingdom the appellant lived with his parents in India being both in education and working on the family farm with his father. The Panel record the appellant's evidence that his uncle was helping him and his family by sending about ₹40,000 on four occasions between 2008 and 2012, with the last sum of money being received in 2011. The Panel note, the appellant made no reference to receiving funds from the sponsor or any of the sponsor's friends during this period prior to 2008.
6. At [16 - 17] the Panel write:
  16. The Appellant went on to explain the money was sent to him by his uncle took care of his education because of the love his uncle felt for him. He further explained that when he finished his year 12, he decided he would like to study in the United Kingdom and his uncle supported his application by gifting him 4 to 5 Lakh rupees. The money was divided between the Appellant's own account, his father's account and the money he held jointly with his father. He believed he might be able to get a copy of the bank statement from his parents but was not sure. He did not have them available for submission at the hearing.
  17. When he arrived in the United Kingdom, the Appellant advised us that he resided with his cousin in Derby before moving to Glasgow in 2013, where he lived with friends. When his uncle moved to Glasgow in 2015, he resided with him there until he moved to Cramlington, where they still reside. Up until 2015, his uncle would visit him every month or so and give him money, which he used to maintain himself. He had no other source of income other than the funds he brought with him from India in 2012. These funds came from the money his uncle had given him to support his Visa application.
7. The Panel conclude at [24] that the evidence does support the fact the sponsor may well have supported the appellant in respect of his education which culminated in the application to travel to the United Kingdom to study, but that no information had been provided as to how he was supported in India other than his inclusion on a ration card issued to the family in October 2012. That evidence was, however, of concern to the Panel as it was noted that both the appellant and his brother had left home by the time the ration card was issued despite being named on the same as family members, warranting very little evidential weight been placed on that document.
8. The Panel having considered the written and oral evidence set out their findings between [27 - 29] in the following terms:

27. The land owned by the Appellant's father was worked by him and the Appellant to generate income and provide funds to maintain the family. The income was supplemented by the sponsor but there is insufficient evidence to demonstrate there was any meaningful dependency on the money from the sponsor by the Appellant. Any additional benefit to the Appellant was solely in respect of supporting his education.
  28. We are not satisfied from the evidence placed before us that, on a balance of probabilities, the Appellant was dependent on his sponsor for financial support in respect of his essential needs, nor that he was part of the sponsor's household in India.
  29. The grounds of appeal indicate the Appellant believed the decision had failed to take account of his rights in terms of Article 8 of the ECHR. His representative did not argue this before us. Any issue in respect of a breach of his Article 8 rights can be addressed at the appropriate time. The decision appealed against does not remove the Appellant from the United Kingdom and a removal notice will require to be served in order for that to happen. It is at that time, the question of a breach of the Appellant's Article 8 rights can be considered.
9. The appellant sought permission to appeal, alleging the Panel had made a misdirection in law about whether education formed part of his essential needs, asserting that it did, and therefore that it was necessary for his uncle to provide remittances for the appellant to meet his essential needs and that the Judge's findings at [24] and [29] were sufficient to enable the appellant to succeed in his appeal. The grounds are set out in further detail in the pleadings of 26 October 2020.
  10. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis of the author was satisfied the points raised in the application for permission to appeal established arguable legal error sufficient to warrant a grant of permission to appeal.

### **Error of law**

11. On behalf of the appellant, Mr Brown relied upon the grounds of appeal submitting specifically that as the EEA national had assumed responsibility for the appellant's educational needs, and that as education was an essential need of the appellant whilst he was a child, that the necessary test had been made out.
12. It is not disputed that the appellant's uncle is an EEA national exercising treaty rights in the United Kingdom. It was not disputed before the Upper Tribunal that the Panel found that funds were transferred between the EEA national and the appellant although noting some of the funds were transferred by the appellant's uncle when he visited India in 2012, by which time the appellant was already in the United Kingdom.
13. At [24] the Panel find that the evidence supports the fact the sponsor may well have supported the appellant in respect of his education which culminated in him coming to the United Kingdom for further studies. The appellant's evidence recorded by the Panel at [16], as noted above, was that the uncle provided funds for his education because of "the love his uncle felt for him" not because there were insufficient funds available to the family to pay for such education or that otherwise the appellant would not have the benefit of an education.

14. It is not disputed that an EEA sponsor can support a family member or EFM even if other resources are available to that family unit in their own right.
15. Mr Greer, who drafted the grounds, refers to the Home Office guidance on Free Movement Rights: extended family members of EEA national, version 7.0, and specifically the information at page 18 in the following terms:

*“Dependency or membership of household outside UK*

*The extended family member must demonstrate they were either:  
dependent on the EEA national in a country other than the UK  
a member of the EEA national's household in a country other than the UK*

*Following the ruling from the Court of Justice of the European Union (CJEU) in the case of Rahman you can consider the extended family member to be dependent, even though they may not have lived in the same country as the EEA national. For example, the EEA national has provided financial support to the extended family member while they lived in another country. The financial support they received shows dependency.*

*The applicant does not need to be dependent on the EEA national to meet all or most of their essential needs. For example, an applicant is considered dependent if they received a pension which covers half of their essential needs and money from their EEA national sponsor which covers the other half.*

*If the applicant is claiming a right of residence on the basis that they were a member of the EEA national's household, then they must have been living with the EEA national in that household in the same country.”*

16. The example provided in the guidance is of a family unit who have some resources of their own, by way of a pension, insufficient to meet all their essential needs, with the balance of such needs being provided by the EEA national, hence creating the required element of dependency upon the support received from the EEA national to meet such essential needs.
17. The question of dependency has been considered in a number of cases, both European and domestic.
18. In Rahman [2012] CJEU Case-83/11 (which followed a reference to the CJEU in MR and Ors (EEA extended family members) Bangladesh [2010] UKUT 449 (IAC)) the CJEU considered the issue of dependency for Extended Family Members. The CJEU held, inter alia, that "the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the Union citizen on whom he is dependent."
19. In Jia Migrationsverket Case C-1/05 the European Court considered “dependence” under Article 1(1)(d) of Directive 73/148/EEC and said this was to be interpreted to the effect that “dependent on them” meant that members of the family of an EU national established in another member state within the meaning of Article 43 of the EC Treaty, needed the material support of that EU national, or his or her spouse, in order to meet their essential needs in the state of origin of those family members or the state from which they had come at the time when they applied to join the EU national. The Court said that Article 6(b) of the Directive was to be interpreted as meaning that proof of the need for material support might be adduced by any appropriate means, while a mere undertaking by the EU national or his or her spouse to support the family members concerned

need not be regarded as establishing the existence of the family member's situation of real dependence.

20. In Bigia & Others [2009] EWCA Civ 79 at paragraph 24 Maurice Kay LJ said that where the question of whether someone is a "family member" depends on a test of dependency, that test is as per paragraph 43 of the ECJ's judgement in Jia. In essence members of the family of a Union citizen needed the material support of that Union citizen or his or her spouse in order to meet their essential needs.
21. In Moneke (EEA - OFMs) Nigeria [2011] UKUT 00341 (IAC), at para 41, the Tribunal accepted that the definition of dependency was accurately captured by current UKBA ECIs which read as follows at ch.5.12: "In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations: Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/her spouse/civil partner in order to meet his/her essential needs - not in order to have a certain level of income. Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support/income from other sources. There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment. The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived."
22. In ECO Manilla v Lim [2015] EWCA Civ 1383 the Appellant sought entry, as the family member of an EU national. The Appellant had savings and a retirement fund in excess of £55,000 and she owned her own home in Malaysia valued at £80,000. The appellant's daughter, married to the EU national, sent her £450 per quarter which she used to meet her expenses without spending any capital. Applying Reyes v Migrationsverket (Case C- 423/12) it was held that it was not enough to show that the financial support was in fact provided by the EU citizen to a family member; the family member must need that support in order to meet her basic needs; there needed to exist a situation of real dependence; receipt of support was a necessary condition of dependency, but not a sufficient condition; and it was necessary to determine that the family member was dependent in the sense of being in need of assistance even though it was irrelevant why she was dependent. If, as here, the family member could support herself, there was no dependency even though she was given financial support from the EU citizen.
23. Article 3(2)(a) of Directive 2004/38/EC reads:
  2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:
    - (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come,

are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

24. The core question that arises in this case is whether the person claiming to be dependent upon the EEA national family member only needs to show they have received funds from the EEA national to meet one of their essential needs, such as education, indicating a singular requirement (the appellants case), or whether the requirement of the Regulation and Directive is for such a person to establish that such assistance is required to meet all their essential needs as a whole, the global argument, as found by the Panel. This issue was discussed with Mr Brown on the basis of a singular versus global argument.
25. The finding of the Panel is clearly that it is the global argument and test that prevails. It is not made out this matter was aired before the Panel in the specific terms, but the Panel's approach is clear from their specific findings at [27 - 28] which whilst set out above, I repeat here :
27. The land owned by the Appellant's father was worked by him and the Appellant to generate income and provide funds to maintain the family. The income was supplemented by the sponsor but there is insufficient evidence to demonstrate there was any meaningful dependency on the money from the sponsor by the Appellant. Any additional benefit to the Appellant was solely in respect of supporting his education.
28. We are not satisfied from the evidence placed before us that, on a balance of probabilities, the Appellant was dependent on his sponsor for financial support in respect of his essential needs, nor that he was part of the sponsor's household in India.
26. The core finding of the Panel is that the appellant had not established that he require to the material support of the EEA national sponsor in order to meet his essential needs, which included his education. Indeed, as the reason given by the appellant for such support was due to the love his uncle felt for him the Panel finding that it had not been established on the evidence that the appellant needed the financial support of the EEA national in order to meet his essential needs is a finding within the range of those reasonably available to the Panel.
27. I do not find it made out the Panel has erred in law in finding the appellant had not established the need for financial support from the EEA national in order to meet his essential need, had not established that those essential needs could not be met without such financial support, and failed to establish that the answer to the question whether the appellant required material support of his uncle in order to meet his essential needs was one that can only be answered in his favour. I find in assessing this issue against the whole of the appellant's essential needs, the global approach, the Panel adopted the correct legal test.

## Decision

- 28. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

29. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 11 March 2021