



**Upper Tribunal
(Immigration and Asylum
Chamber)**

**Appeal Numbers: UI-2022-002102
UI-2022-002103
UI-2022-002104
UI-2022-002105**

On appeal from EA/00039/2021
EA/00040/2021
EA/00042/2021
EA/00044/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 21 October 2022**

**Decision & Reasons Promulgated
On 4 December 2022**

Before

**UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE CHANA**

Between

**MOHAMMED IFTIKHAR
MADIHA BASHIR
AHMED HUSSAIN (A MINOR)
ALIZA GULL (A MINOR)
[NO ANONYMITY ORDER]**

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the appellants: Mr Alex Bennie of Counsel, instructed by Iqbal Law
Chambers Ltd

For the respondent: Mr Steven Walker, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission from the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision on 5 November 2020 to refuse to issue them a family permit, to join the sponsor as extended family members, pursuant to Regulation 8(2)(b) of the Immigration (European Economic Area) Regulations 2016.
2. The appellants, a husband and wife and their two minor children, are all citizens of Pakistan. The sponsor, who is the principal appellant's brother, is a Spanish citizen. The respondent was not satisfied that the family was dependent on the sponsor as required, nor that they had demonstrated that he was in a position to support them all if they came to the UK, in addition to his own wife and children.
3. **Mode of hearing.** The hearing today took place face to face.

Background

4. The appellants say that the husband, the principal appellant, was made redundant in 2019 and that the sponsor has been supporting them all since then. The principal appellant's witness statement says that he has not been able to obtain further employment. There is another brother in Pakistan, who is also said to be unemployed, but the First-tier Judge recorded that the sponsor said in oral evidence that he was not supporting that brother.

First-tier Tribunal decision

5. The First-tier Judge was not satisfied by the evidence before him, which he considered did not establish that the rather limited evidence of money being sent to the appellants by the sponsor showed that his financial support was required for their essential needs.
6. The First-tier Tribunal dismissed the appeals, the core of the decision being at [10]:

"10. ...there is a lack of evidence in respect of the appellants' circumstances in Pakistan. There is simply some evidence of remittances and witness statements from the first appellant and the sponsor. If that was all that was needed, then nearly all cases would succeed. There needs to be more. There is nothing before me to establish that the money being sent by the sponsor is for the essential and basic needs of the appellants, or indeed, that there exists a situation of real dependence."

7. The appellants sought permission to appeal to the Upper Tribunal.

Permission to appeal

8. There were three grounds of appeal:
 - (a) **Ground 1.** That the First-tier Judge made a material error of fact in recording that the sponsor had said that he had another brother in

Pakistan whom he did not support, although that brother had no income. The sponsor denied having said that;

- (b) **Ground 2.** The appellants contended that the judge's finding that there was nothing to suggest that they were not destitute was irrational and/or unreasonable, because their not being destitute was precisely because of the financial support which the sponsor was providing. At [8], the judge had found that there was no dispute that the sponsor had been supporting the appellants since 2019, following the principal appellant's redundancy; and
- (c) **Ground 3.** The appellants argued that their 126-page bundle of evidence, including witness statements, money transfer receipts, bank statements, ex-employer's letters, photographs and payslips had not been adequately considered and that the judge had not paid proper attention to their skeleton argument prepared for the First-tier Tribunal.

9. Permission to appeal was granted on the following basis:

"2. The grounds assert that the judge erred when he found the sponsor incredible, when he said that he did not support another brother in Pakistan, even though that brother had no income. It is argued [that] the sponsor did not say in oral evidence that his other brother had no income. Although there is a witness statement from the sponsor about his evidence, there is no statement from the representative attaching his/her notes of evidence, and nothing to show that the representatives have asked for the Home Office Presenting Officer to confirm the position from their notes, all of which would assist at the error of law hearing. If what the grounds state is correct, there is an arguable error of law on this ground as this was a material finding."

10. Permission to appeal was granted on all three grounds.

Rule 24 Reply

11. There was no Rule 24 Reply to the grant of permission to appeal.

12. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

13. At the Upper Tribunal hearing, Mr Bennie for the appellants accepted that despite the plain indication in the grant of permission, the appellants had not produced Counsel's note from the First-tier Tribunal hearing or any other evidence to show what the sponsor's evidence had been. The Upper Tribunal had the benefit of the judge's own notes of the evidence, which clearly confirm that the sponsor said there was another brother in Pakistan whom he did not support, and who had no income. There were also 5 married sisters in Pakistan. We accept that this was the sponsor's evidence.

14. The bank statements produced show only one payment in to the principal appellant's account, that being used up as the month progressed and down to very low levels by the end of the month.
15. The principal appellant had provided details of the family expenditure at [4] of his witness statement: the sponsor sent Pakistan Rupees 50,000 per month and he spent Rupees 25000 on food and groceries, Rupees 7000 on travel, PKR 5000 on utilities, another PKR 5000 on clothing, PKR 3000 for medical expenses and PKR 5000 for house maintenance, which together came to about PKR 50,000 a month. The principal appellant's statement also said that 'without my brother's financial support we would not be able to meet our essential day to day needs'. There was a letter from his former employer, explaining that due to a downturn in work, he had been dismissed.
16. The sponsor in his witness statement said that he had sent money through friends or taken it himself, always in cash, until 2020 when he began sending it by money transfers. He was earning £1116 a month from Amazon and a further £1955 from self-employed work, together with £140 child benefit, totalling £3211 a month, from which he paid £650 rent and £120 council tax each month. He also had £4000 invested in bonds, which could be sold if the need arose.
17. Mr Bennie argued that the judge's decision was contrary to the weight of the evidence.
18. For the respondent, Mr Walker conceded that there was before the First-tier Judge sufficient evidence to establish dependency and that it would be appropriate for the Upper Tribunal to set aside the decision of the First-tier Tribunal and allow the appeal.

DECISION

19. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. We remake the decision by allowing the appellants' appeals.

Signed [Judith AJC Gleeson](#)
2022

Date: 1 November

Upper Tribunal Judge Gleeson