



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04331/2019 (V)**

THE IMMIGRATION ACTS

**Heard at Field House (by remote video
means)
On 20th September 2021**

**Decision & Reasons
Promulgated
On 13 April 2022**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**SAJEDUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Mavrantonis of Counsel, instructed by Farani Taylor
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were some connection issues for Mr Mavrantonis early in the hearing, but which resolved without any further audio or visual difficulties during the course of the hearing. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained the papers in hard copy.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Mailer promulgated on 13 April 2021, in which the Appellant's appeal against the decision to refuse his application for an EEA Residence Card as an extended family member dated 12 August 2019 was dismissed.
3. The Appellant is a national of Bangladesh, born on 11 August 1988 who entered the United Kingdom on 12 September 2009 as a Tier 4 (General) Student, with leave to remain as such granted on a number of occasions to 27 June 2015. The Appellant then applied for an EEA Residence Card as the extended family member of his uncle, Mr Jahangir Alam (the Sponsor) which was refused on 7 December 2015. A further five applications for the same were made in the period up to July 2018, all of which were refused by the Respondent, with the latest decision issued on 12 August 2019 which carried with it a right of appeal.
4. The Respondent refused the application the basis that there was a lack of evidence that the Appellant was dependent on the Sponsor prior to the Appellant's arrival in the United Kingdom in 2009 and a lack of evidence of dependency or membership of the same household between 2009 and 2015.
5. Judge Mailer dismissed the appeal in a decision promulgated on 13 April 2021 on the basis that the Appellant had not established dependency on the Sponsor prior to 2009 before his arrival in the United Kingdom or during the period 2009 to 2015 in the United Kingdom. The Appellant did not therefore meet the requirements of Regulation 8 of the Immigration (European Economic Area) Regulations 2016 for a Residence Card.

The appeal

6. The Appellant's initial grounds of appeal were that, first, the First-tier Tribunal materially erred in paragraph 111 of the decision stating that there was no evidence from two individuals in relation to loan arrangements when there were statements from both in evidence before the First-tier Tribunal; and secondly, that the First-tier Tribunal materially erred in failing to properly consider the Appellant's evidence in relation to his dependency in the United Kingdom from 2009 to 2015, in particular the evidence of the Appellant and the Sponsor of cash payments at this time.
7. On 2 September 2021, an application was made to amend the grounds of appeal on behalf of the Appellant to include a third ground that the First-tier Tribunal failed to: (i) apply the correct test of 'dependency' for the purposes of EU law which required only support for some of the Appellant's essential needs; (ii) take into account that in relation to the cheques between 1989 and 1998, the Appellant was a young child who could not be expected to have any contemporaneous knowledge of the arrangements; and (iii) take into account the fact that the Appellant was not able to meet all of his needs whilst working limited hours. No explanation was offered as to the late submission of these further points

and when asked the reasons for this, Mr Mavrantonis could only state that the further points were identified following his instruction. At the hearing I indicated I would hear submissions on these further points de bene esse.

8. In relation to the first ground of appeal, Mr Mavrantonis submitted that the First-tier Tribunal had failed to consider the evidence and this was material to the findings on dependency pre-2009 in the absence of any adverse credibility findings and in the context of relatively limited documentary evidence. It was suggested that there were 'domino' findings which cumulatively led to the rejection of this part of the claim but that even though the evidence relating to the loan dated back to the 1980's and early 1990's, without more it would be sufficient to establish dependency for some of the Appellant's essential needs in Bangladesh prior to 2009 for the purposes of Regulation 8.
9. In relation to the second ground of appeal, it was submitted that paragraph 123 of the decision simply didn't make sense in that it referred to bank transfers of cash, which is not possible and it is unclear what evidence of cash transfers was expected by the Tribunal. Overall, it indicated that the Appellant's claim in relation to this had not been properly considered.
10. In relation to the third ground of appeal, it was submitted that the First-tier Tribunal had failed to set out the test for dependency or properly apply it to the evidence. In particular, it was noted that no adverse credibility findings had been made and that the Appellant was very young at the time of some of the arrangements. There was nothing inconsistent with the Appellant working and being dependent on the Sponsor at the same time and account should have been taken of the Appellant's low income whilst living and studying in London from which he could not have fully supported himself and must have had funds from elsewhere.
11. Mr Mavrantonis also queried paragraphs 121 and 122 of the decision as redundant and also the statement in paragraph 123 that the Appellant had not shown that he 'continued' to be dependent on the Sponsor between 2009 and 2015 in circumstances where there was no finding that he was dependent on him prior to 2009. Finally, it was noted that there was no finding on whether the Appellant was a member of the Sponsor's household from 2015, but it was accepted that this would only be relevant if errors of law were found in the findings in relation to the preceding years. These final points went even further than the amended grounds of appeal, with no further explanation of why they were raised only during the course of the hearing.
12. On behalf of the Respondent, Ms Everett submitted that any error identified in the first ground of appeal was only slight and not material in the context of the lack of evidence for the period before 2009 and the copious reasons for rejecting the claim in this period. As to the second ground of appeal, it was submitted that paragraph 123 of the decision had simply been misread and what is actually meant was either that there was

no evidence of any bank transfers or from bank statements of any withdrawals or deposits of cash, the two slightly conflated in the decision but without any inconsistency or any error of law.

13. Finally, if there is no error of law on the first or second grounds of appeal, Ms Everett submitted that the matters now identified in the third ground would not make any difference to the outcome of the appeal. The only evidence of financial support was at best of negligible amounts sent sporadically which could not meet the threshold for providing for even some essential needs to establish dependency. In the absence of any dependency prior to 2015, it is irrelevant whether a finding was made as to membership of the same household from 2015 onwards.

Findings and reasons

14. There is no dispute on the first ground of appeal that the First-tier Tribunal erred in paragraph 111 of the decision when stating that no statement had been provided from Shamim Khoka and Nasir Uddin regarding the Appellant's claim that they repaid loans due to the Sponsor through Mr Alauddin Ahmed; when there were two statements within the evidence before the First-tier Tribunal. The issue in the first ground of appeal is whether the failure to consider this material was material to the outcome of the appeal; for which it is necessary to consider in more detail the evidence itself and the overall findings of the First-tier Tribunal.

15. The statement dated 15 March 2021 from Shamim Khoka stated:

"I have borrowed at 1991, 2,00,000Tk (Approx. £2,000) from my brother Jahangir Alam when I moved to Malaysia and repaid it gradually during 1990's to Alauddin Ahmed (my brother-in-law) as my brother instructed me to give him.

He was helping my parents and my sister family throughout the whole period as both of us (me and my brother moved abroad)."

16. The statement did not contain any address or contact details, nor any copy of an identity document or supporting documentary evidence. The author does not identify whether the 'he' in the second paragraph was Jahangir Alam or Alauddin; nor does the statement identify by name the relatives helped or the Appellant specifically.

17. There is a statement dated 20 July 2020 from Nasir Uddin, which includes an address in KSA but no other contact details or identity documents, nor any supporting evidence. The two copies of this statement in the bundle are very poor making them barely legible, but so far as can be ascertained, it states:

"I write to confirm that I have borrowed some money during 1980s from my cousin brother Jahangir Alam while I was moving to Saudi Arabia and I paid it off between 4-5 years approximately. I have

transferred those money to his brother in laws (Aladin Ahmed) account as Jahangir Alam instructed.

Please do not hesitate to contact if you need further information.”

18. This short statement does not identify how much money was borrowed, nor does it identify the Appellant or ultimate recipient of the funds.
19. The First-tier Tribunal found the evidence in relation to the period when the Appellant was in Bangladesh to be vague and very limited, with aspects lacking in explanation and an entirely unexplained period between 1998 and 2009 as to how any financial support was provided at all to the Appellant (and/or his mother) from the Sponsor. The very limited nature of the statements above, which relate to the period up to the 1990's only does nothing to address the key findings of the First-tier Tribunal as to the overall lack of evidence of financial support during this period. This is in the context of findings in relation to the other claims of financial support in relation to this period for which the Appellant's account was rejected.
20. In these circumstances, even if the First-tier Tribunal had taken into account these two statements, it is impossible to see how they could have made any material difference to the outcome of the appeal even on the sole point of prior dependency given the very limited nature of the evidence they contain which could not be tested further and could not on any rational view alone have established dependency in the period prior to 2009, even to the lower standard of support to meet some essential needs. The First-tier Tribunal lawfully and rationally concluded on the remainder of the evidence in relation to the period prior to 2009, that it was insufficient to establish dependency. These two additional documents could not have altered the overall conclusion in these circumstances. Further, for this to be a material error, the Appellant would also have to establish a material error of law in relation to the period when he was in the United Kingdom, which for the reasons set out below, he has not.
21. The second ground of appeal is solely focused on the findings in paragraph 123 of the decision which states:

“123. I find on the evidence adduced that the appellant has not shown that he continued to be dependent on his sponsor for the whole of the period between 2009 and 2015. Both the appellant and Mr Alam had bank accounts at the time. Mr Alam was living in Birmingham and the appellant in Barking. There is however no evidence of any bank transfer showing payments of cash to the appellant's account before the appellant moved in with his uncle in 2015. There is no record of small amounts of cash being handed over when they met during this period. The sponsor was living in Birmingham and the appellant in Barking.”

22. This paragraph could have perhaps been proof read a little better as the central part appears to conflate two different difficulties with the evidence

- first that there was no evidence of any bank transfers and secondly no evidence of payments of cash (for example bank statements showing withdrawal of money or payment in of cash). Of course logically there is no such thing as a bank transfer of cash, it is either a bank transfer or it is physical cash; but in circumstances where there was a lack of evidence of either and an implausibility of small amounts of cash being given considering the distance between the Appellant and the Sponsor; there is no difficulty or inconsistency with this paragraph. The First-tier Tribunal has given adequate reasons for the finding without any unreasonable expectations of evidence being available in relation to cash. The Appellant's claim in relation to cash payments was not misunderstood, it was simply rejected for the reasons given. Poor wording in this paragraph in the decision is not an error of law and in the scheme of the decision read as a whole, is not even remotely material to the outcome.

23. There was no good reason for the addition of a new third ground of appeal, nor its expansion yet further in oral submissions at this late stage of proceedings. The fact that Counsel thought of this when instructed is not a sufficient explanation as to why it was not raised earlier and in the circumstances where in any event it has no merit; there is no good reason to grant permission on it. However, I give brief reasons in relation to the points raised for completeness having heard submissions on them.
24. Although the First-tier Tribunal did not expressly set out the test for dependency beyond a reference to Regulation 8 of the Immigration (European Economic Area) Regulations 2016, that does not of itself indicate that the wrong test was applied or a more stringent one was applied. On the correct test, it was lawfully open to the First-tier Tribunal on the evidence before it to find that the Appellant had not established prior dependency, or present dependency. The submissions as to the Appellant's age at the time of some support in the 1980s and 1990s, his part-time work and inferences as to his living expenses take the matter no further. These issues were all adequately considered and clear reasons given for the findings made.
25. The final points about paragraphs 121 and 122 being redundant are no more than comments on the style of the decision and do not identify any errors of law. Similarly, the final point about paragraph 123 is simply a misreading of the way in which it is drafted, I read 'continued to be dependent' as referring to continuing dependence throughout the whole of the 2009 to 2015 period; but in any event it is wholly immaterial given the clear findings in relation to all periods prior to 2015. Similarly, there was no need to make a finding on whether the Appellant was a member of the Sponsor's household from 2015 as the appeal stood to be dismissed in any event.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed G Jackson
2021

Date 21st September

Upper Tribunal Judge Jackson