



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

Appeal Numbers: EA/05603/2021  
(UI-2022-000127)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 7 June 2022**

**Decision & Reasons Promulgated  
On the 26 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**MR HARNEK SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**AND**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr R. Sharma, Counsel instructed on behalf of the appellant

For the Respondent: Mr T. Melvin, Senior Presenting Officer

**DECISION AND REASONS**

*Introduction:*

1. This is the remaking of the appeal of Mr Harnek Singh who is a citizen of India born on the 11 December 1983. The FtTJ did not make an anonymity order and no application was made for such an order before the Upper Tribunal.

*The background:*

2. The background is set out in the evidence in the bundles. The appellant, with his mother and father applied on 31 December 2020 for family permits as the extended family members of the sponsor ( the appellant's brother in law), a national of Italy, resident in the United Kingdom.
3. The application made on behalf of the appellant's parents was allowed but the appellant's application was refused in a decision taken on 15 March 2021.
4. The decision letter stated that to apply for an EEA permit as the Extended Family Member of an EEA national in accordance with Regulation 8 of the Immigration (EEA) Regulations 2016, the appellant must satisfy the respondent that he is financially dependent on the sponsor.
5. The application was refused by the Entry Clearance Officer (ECO) with reasons in the refusal dated 15 March 2021. The ECO acknowledged that the appellant had submitted 7 money transfer receipts dated between 10 January 2020 and 20 October 2020 sent by the sponsor to him. There were no money transfer receipts after October 2020 and the ECO was not satisfied that the appellant was dependent on his sponsor. Further, the only evidence of the appellant's financial circumstances in India was a bank statement for an account held by him dated from 29 June 2020 to 29 December 2020, a six-month period which was deemed to be insufficient to demonstrate his financial position as it only covered a short, limited period.
6. The ECO concluded that on the evidence submitted in support of the application, he was not satisfied that the appellant was dependent on the sponsor and therefore was not satisfied that he was an Extended Family Member in accordance with Regulation 8 (2) of the Immigration (EEA) Regulations 2016. The application for an EEA family permit was refused as the appellant could not meet all of the requirements of Regulation 12.
7. The appellant appealed and the appeal came before the FtT on the 25 November 2021. In a decision promulgated on 20 December 2021 the FtTJ dismissed his appeal having found that the appellant had not demonstrated on the balance of probabilities that he was dependent on the sponsor.
8. Permission to appeal was issued and on 8 February 2022 permission was granted by FtTJ Hatton. The appeal came before the Upper Tribunal on the 5 April 2022. In a decision promulgated on the 20 April 2022 I concluded that the decision of the FtT involved the making of

an error on a point of law. This decision should be read alongside the “error of law decision “.

9. I therefore set aside the decision and at paragraph [25] of that decision, directions were given for the remaking of the appeal before the Upper Tribunal.

*The hearing before the Upper Tribunal:*

10. The hearing was listed on 7 June 2022. The appellant was represented by Mr Sharma of Counsel and the Entry Clearance Officer (“ECO”) by Mr Melvin, Senior Presenting Officer.
11. For the purposes of the hearing the evidence was contained in the documentation filed on the CE File, which included the bundle of documents on behalf of the appellant which had been originally filed before the FTT, the respondent’s bundle including the decision letter, and an updated bundle on behalf of the appellant which had been filed after the error of law hearing.
12. At the hearing oral evidence was given by 2 witnesses. The sponsor, Mr Singh adopted his most recent witness statement dated 24/5/22 (p13-15AB) as his evidence in chief. He confirmed in his oral evidence that he had been providing money transfers and financial remittances supporting the appellant and his parents before they entered the United Kingdom. He stated that without the money that he had been sending, the appellant could not cover his day-to-day expenses.
13. He was asked about the circumstances of the appellant and the witness stated that the appellant had lost his job in a grocery shop in March 2020 and that since that time he had not been able to obtain any employment although he had been trying to do so.
14. The sponsor confirmed that his parents were now in the United Kingdom having been granted entry clearance. He was asked if the appellant’s parents were financially supporting him in any way? The sponsor stated that they were not and that he was the only one who was providing financial support for the appellant and apart from the remittances he confirmed that the appellant did not obtain any money from anyone else.
15. In cross-examination he was asked how long the appellant had worked in the grocery shop? The Sponsor replied from 2014 until he lost his job in March 2020. As to what he done before 2014, he stated that he had not been working.
16. He was asked questions about the date he finished school which he thought was year 12 that he could not remember what year it was because it occurred before the witness got married.

17. The sponsor was asked about whether the appellant had been working before 2014? That witness stated that he had not been working before this and when asked the explanation, he stated that he had been trying to get a job and that his father had an accident in 2013 and a few months afterwards he got a job in 2014. He was asked who had supported the appellant between 2000 and 2014 when he got the job in the grocery shop. The sponsor stated, "his father."
18. The sponsor confirmed that the appellant did not have any medical problems.
19. He was asked about paragraph 6 of his witness statement where he had stated it would be unfair to expect the appellant to reside alone in India when he had no one left to support him? The Sponsor stated yes at the time he would be living on his own. When asked if there was any reason it would be unfair for him to live on his own, the sponsor stated "no he has not been able to get a job he tried very hard but is not been able to get one." He confirmed that the appellant was not married.
20. When asked when his father-in-law and mother-in-law had entered the United Kingdom, he said he thought it was 21 June 2021, but he could not be sure of the exact date. When asked to explain how the appellant had coped for the last 12 months, the sponsor stated that the appellant had done so "from my help, I help them from here".
21. He was asked about the accommodation that he lives in. The sponsor stated that the family had rented the house from someone in the neighbourhood. He stated that it was not a home owned by the family, but it was rented accommodation. When asked if the appellant was living in the same rented house or another house in India, the sponsor stated, "no the same place." When asked how long the parents were renting accommodation for the sponsor stated, "more than 20 years".
22. When asked how long he had been supporting the appellant, the sponsor stated from the end of June / July 2020. When asked how the appellant has supported himself from March to July, the sponsor stated that the appellant had worked until March 2020, and he had some money saved up which he had used before the sponsor began providing financial assistance in June/July 2020. When asked if the appellant had enough savings, the sponsor said yes for 3 months. He said the rent included gas, electric and also some food expenses.
23. He was asked how often he spoke to his brother-in-law, and he said every 1 or 2 weeks although his mother talks to him every 2 or 3 days. In answer to a question from the bench by reference to page 43 of the appellant's bundle, he stated that they were pictures and screenshots of WhatsApp conversations between the appellant and

his family members. The documents in the bundle at pages 49 to 54 the sponsor confirmed were receipts for shopping for food and drinks for the appellant.

24. Mr Singh, the appellant's father, gave evidence and adopted his witness statement dated 23/5/22 as his evidence in chief. By reference to paragraph 4 he was asked before March 2020 how the appellant was looking after his financial requirements? The witness stated that the appellant worked in a shop and that since losing his job due to the pandemic he did not have any other income. The witness confirmed that his financial needs were catered for by the sponsor who was sending him money.
25. In cross-examination he was asked about the age his son left school. He thought that it must have been 12 to 13 years ago. He was asked if he remembered the year, but he stated he could not remember exactly perhaps 2009 - 2010. He confirmed that he did not go to university and that he left school approximately when aged 20 to 22 years of age. When asked if there was any reason stayed on at school, he said that he had been sent to college, but he had failed in his studies. He could not remember the year that he failed. He confirmed that his son was not married.
26. He was cross-examined about when his son started in the grocery shop. The witness stated from the year 2014". When asked what he did between school or college in 2014, the witness confirmed that the appellant was not able to get any job at all. When asked who supported him until 2014 when he got his job in the grocery store, the witness said, "I did". He was asked since his injury in 2013 how did he support himself and his wife? The witness stated that he had some money that he had saved and some money that the sponsor had helped him with.
27. He was cross-examined as to the circumstances where the appellant was currently living and was asked if it was his home or someone else's? The witness confirmed that it was a rented house and when asked how long it to be rented for, the witness stated that he had been rented before and that he had never bought a house. The witness stated that he had no other direct family members in India.
28. At the conclusion of the evidence I heard submissions from each of the advocates.
29. Mr Melvin on behalf of the respondent indicated that he did not rely on the skeleton argument that had been provided prior to the hearing as this had been before hearing the oral evidence from the witnesses. In his submissions, he indicated that he only sought to rely on the entry clearance officer's decision and that he was going to take no issue with the credibility of the witnesses who had given evidence.

30. Mr Sharma on behalf of the appellant placed reliance on the documentary evidence in the bundle and also that there was now no challenge to the credibility of the evidence that had been put before the Upper Tribunal, including the documents and the written witness statements.
31. He submitted that the outstanding issues which had been identified in the error of law decision had now been dealt with and that there was no dispute on the evidence that the appellant's parents had entered the United Kingdom having been granted entry clearance from the same application made by the appellant. They do not work in the United Kingdom, and they have not been able to support the appellant.
32. Mr Sharma further submitted that there was no challenge to the evidence of the sponsor and the matters set out in his witness statement and in the oral evidence given. The evidence which was now unchallenged demonstrates that the appellant is dependent upon the sponsor for all his basic and essential needs, having no income source from anywhere else. He referred to the money transfers and the accompanying bank statements which he stated were consistent with the monies being sent to the appellant from the sponsors financial resources. He highlighted pages in the bundle.
33. As to the 2 points raised in the decision letter, Mr Sharma submitted that it had been accepted by the respondent in the previous skeleton argument that the money transfer receipts in the original bundle went up to December 2020 and also up until March to August 2021. There were additional money receipt evidence in the up-to-date bundle. As to bank statements, an extended period bank statements covered the period up until April 2022. Consequently, the issues had been resolved and they were resolved in favour of the appellant having demonstrated that he was dependent on the sponsor for his essential needs.

*Analysis:*

34. The Immigration (European Economic Area) Regulations 2016 have now been revoked by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 Schedule 1(1) paragraph 2(2) (December 31, 2020. Revocation, however, has effect subject to savings specified in The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, Regulation 2 and Schedule 1 and The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 Regulations ("The Transitional Provisions").
35. Schedule 3 paragraph 5 of the Transitional Provisions deals with existing appeal rights and appeals and as this appeal was extant prior

to commencement day, and it is not argued by either party that the tribunal does not have jurisdiction to consider the appeal.

36. Prior to revocation Regulation 8 of the 2016 Regulations (as far as relevant) read as follows:

Extended family member"

**8.** - (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (1A),(2), (3), (4) or (5).

(1A) ...

(2) The condition in this paragraph is that the person is-"

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either-"

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

37. Mr Melvin on behalf of the respondent indicated that the credibility of the witnesses who had given evidence was not challenged. That was a concession fairly and properly made by Mr Melvin as the oral evidence given by both witnesses was consistent with their written witness statements but also both witnesses gave evidence independent of the other and their evidence concerning the appellant's circumstances, both prior to the issue of dependency and also post the issue of dependency was consistently given. There were no inconsistencies in their evidence, and I am satisfied that both gave credible evidence as to the circumstances of the appellant.
38. Mr Melvin however stated that he relied upon the decision letter. The issue raised in the decision letter relates to the issue of dependency and whether the appellant had discharged the burden to show that he was dependent upon the sponsor by reference to the evidence and in particular evidence of money remittances and bank statements of the appellant.
39. Mr Sharma referred to the relevant law on the issue of dependency. There is no dispute as to the relevant principles and most recently they have been set out in the decision of Latayan v SSHD [2020] EWCA Civ 191.

40. Dependency is a question of fact and in that decision, at paragraph 23 the court cited the decision of SM (India) v ECO (Mumbai) [2009] EWCA Civ 1426 as follows:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket* Case C-1/05; [\[2007\] QB 545](#) at [37 and 42-43] and *Reyes v Migrationsverket* Case C-423/12; [\[2014\] QB 1140](#) at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC), dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [\[2009\] EWCA \(Civ\) 1426](#)):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

41. The question of dependency as set out above entails a situation of real dependence in which the family members, in this case the appellant, having regard to their financial and social conditions is not in a position to support themselves thus needing the material support of the sponsor in order to meet their essential needs. It is also plain that questions of dependency must not be reduced to a bare calculation of financial dependency but to be construed broadly to involve holistic examination of a number of factors and so as to establish whether there is a dependence that is genuine.
42. When applying the test to the circumstances of this appeal I am satisfied that the appellant is dependent on the sponsor for his essential needs. When looking at his circumstances the appellant previously supported himself and his parents in India after his father was injured in an accident and this occurred when he obtained employment in 2014. The appellant's work history is not challenged, and the appellant continued employment up until the pandemic having lost his job in March 2020. He has had no source of income since his savings have been utilised and the evidence from the sponsor is that he provided both financial support evidenced by remittances from his employment in the UK and also emotional support evidenced by the WhatsApp content( page 43 AB).



43. Whilst the ECO referred to their being only 6 months financial money remittances, the bundle of documents exhibited money receipts from both 2020 and 2021 ( I refer to the witness statement filed 7/9/21 that sets out the credits and also the money transfer receipts from March 2021 to August 2021) and also exhibited at pages 55 to 60. In the most recent bundle there are money receipts exhibited at pages 46 - 51. The bank statements for the appellant also show receipts of monies consistent with the money transfer receipts. Mr Sharma on behalf of the appellant directed the Tribunal's attention to the documents. For example, at page 48 sums of 14,680.09 and 5825.80 and they appear in the bank statements of page 52.
44. The bank statements do not show income from any other source and therefore he is reliant only the financial remittances as provided by the sponsor. This is consistent with the oral evidence of the sponsor and the witness which is now not challenged.
45. As far as it was previously suggested that the appellant had resources of his own, the property in which he is living was formally a rented property by his family where they had previously resided. I am satisfied that the circumstances of his parents are such that they do not have any source of income other than that provided by the sponsor upon whom they are dependent. This was recognised by the issue of entry clearance to them as dependent on the sponsor.
46. It is accepted that the EEA sponsor is a qualified person who is genuinely exercising Treaty Rights in the United Kingdom.
47. In all the circumstances and when considering the evidence as a whole, I am satisfied that the appellant has established on the balance of probabilities that he is dependent upon the EEA sponsor. This is because he is presently unable to support himself and is in receipt of financial support for his basic and essential needs.

### Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law, the decision is set aside and remade as follows:

The appeal is allowed under the EEA Regulations.

Signed Upper Tribunal Judge Reeds

Dated: 7 June 2022