



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

**Appeal Numbers:
EA/05792/2021; UI-2022-001666
EA/05794/2021; UI-2022-001670
EA/05796/2021; UI-2022-001671**

THE IMMIGRATION ACTS

**Heard at Field House
On the 18 August 2022**

**Decision & Reasons Promulgated
On the 12 September 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**MUHAMMAD ALI
MUHAMMAD UMAR
MADIHA SHOUKAT**

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr S Mustafa, instructed by Immigration Aid
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan born on 15 October 1983, 14 October 1986 and 13 February 1992 respectively. They appeal against the decision of First-tier Tribunal Judge Mills ('the judge'), promulgated on 14 January 2022, dismissing their appeals against the refusal of EEA family permits under the Immigration (EEA) Regulations 2016 ('the 2016 Regulations').
2. The appellants are the siblings of Muhammad Nawaz ('the sponsor'), an EEA national exercising Treaty rights in the UK. The respondent refused the applications under Regulation 8 of the 2016 Regulations on the basis the appellants were not related as claimed and they were not dependent on the sponsor.

The judge's findings

3. The appellants had provided DNA evidence confirming they were the sponsor's siblings and this issue was conceded by the respondent at the hearing before the First-tier Tribunal. The sole issue before the judge was whether the appellants were dependent on the sponsor.
4. The judge set out the reasons given by the Entry Clearance Officer in each of the three separate decisions. In summary, the evidence showed the sponsor sent money to the appellants but the money transfer receipts did not demonstrate that the appellants were dependant on the sponsor for their essential living needs. The appellants had failed to provide a reasonable account of the family's financial circumstances in Pakistan.
5. The judge referred to the appellants' bundles and heard oral evidence from the sponsor. He set out the applicable Regulations and case law and made the following relevant findings:

"25. On the basis of the above evidence of remittances, I accept that the first appellant has been receiving not insubstantial sums of money from the sponsor, certainly when taking into account the cost of living in Pakistan. For example, the rent for the property where the appellants are said to live is just 20,000 Pakistani Rupees per month, which equates to around £85 at today's exchange rates.

26. However, while the authorities are clear that dependency in EU law is simply a question of fact, this does not mean that dependency is shown to exist merely through establishing the existence of remittances. It also needs to be shown that those remittances are needed to meet the essential daily needs of the appellants. If the other resources available to an individual in the country where they reside - be it from employment, savings, or family support - are enough to meet their essential needs, then remittances from relatives abroad which do no more than elevate their standard of life beyond that base level of need, will not establish dependency.

...

"29. In total, the household consists of 13 people, being the parents of the appellants and sponsor; the first appellant, his wife and two children (aged 5 and 1); the second appellant, his wife and two children (aged 2 and 1); and the third appellant and her two children (aged 3 and 1). All 13 are said to have no other source of income except the remittances sent by the sponsor."

...

"32. It is notable that the remittances have varied significantly overtime. In the 12 months prior to the appeal hearing on December 8th 2021, the sponsor made very regular payments,

averaging around £450 per month to the first appellant. In the 12 months prior to the applications on December 25th 2020 there is evidence of just four payments, which total £1679, and therefore averaging around £140 per month. There are also long periods of time, for example February 2017 to August 2018 and again from June 2019 to January 2020, where no money has been shown to have been sent at all.

33. I was given no explanation for why there was no evidence of support being sent in these periods, nor why the amounts sent fluctuated so much from year to year. If it is true that this money is all that was coming into the household during the past several (sic) years, it is very hard to understand how the appellants supported themselves, and their numerous dependents, during the periods when no money was being sent from the UK. I am led to doubt that the appellants and sponsor are telling the truth when they say that there has been no other source of income into the household.”

...

- “38. In all of the circumstances, I consider it more likely than not that the third appellant remains in a subsisting relationship with and dependent upon her husband, and that this is a feigned separation designed to facilitate her entry to the UK for economic reasons.”

...

- “40. I consider it to be more likely than not that the first and second appellants have incomes of their own, as it is unlikely that they would have both entered marriages and, more significantly, chosen to have children if their financial situations had been as precarious as they claim.
41. Taking all of the evidence in the round, I do not accept that the appellants have shown that they are dependent upon their Portuguese brother, as I do not accept that they do not have other sources of income and support with which they are able to meet their essential daily needs.”

Grounds of appeal

6. The appellant appealed on the grounds the judge materially erred in law for the following reasons:
- “(1) Failing to give reasons or at least adequate reasons for findings on material matters.
 - (2) Failing to take into account and/or resolve conflicts of facts or opinion on material matters.
 - (3) Giving weight to immaterial/irrelevant matters.
 - (4) Making a material misdirection of law on any material matters.

- (5) Making a mistake as to material fact, which could be established by objective and uncontentious evidence.”
7. The grounds submit the judge failed to attach adequate weight to the money transfers from 2017 which corroborated the appellants’ consistent account. The judge’s finding that there were only four payments in 2020 averaging £140 per month was speculative and there was no requirement to provide money transfer receipts for every single month. The judge failed to put the appellant on notice of an adverse inference in respect of whether this was the total income which was unfair.
 8. The judge relied on a report which was not provided to the appellants in relation to unemployment in Pakistan and failed to attach weight to the report submitted by the appellant. The judge failed to consider the appellants circumstances objectively.
 9. In summary, the judge failed to provide adequate reasons for his findings, attached too much weight to irrelevant matters and failed to attach adequate weight to the unchallenged evidence.
 10. Permission to appeal was granted by First-tier Tribunal Judge Scott-Baker on 2 April 2022 on the grounds it was arguable the judge failed to give adequate reasons for his findings and accorded too much weight to immaterial matters. It was arguable the judge failed to put matters at the hearing which amounted to procedural unfairness.

Appellant’s submissions

11. Mr Mustafa relied on the grounds and submitted the judge accepted the sponsor sent ‘not insubstantial’ sums of money to the appellants and they were living in the same household. There was evidence from the sponsor of the family expenses which was consistent with the appellants’ witness statements. There was no evidence before the judge of other sources of income. The funds provided by the sponsor were to meet the appellants’ essential needs. There was sufficient evidence before the judge to establish dependency and the judge had misdirected himself.
12. Mr Mustafa submitted there were other explanations in relation to income which were not before the judge because these matters were not put to the sponsor. The judge speculated as to the total income being sent and did not look at the overall dependency for a long period of time. Any small gap in evidence should be overlooked. There was a significant amount of money being sent by the sponsor and consistent evidence. The judge’s conclusions were irrational given there was no evidence of another source of income and there was evidence of significant support by the sponsor. There was no other logical conclusion: the appellants were dependent on the sponsor.

13. The reason for dependency was not relevant and there was evidence of the difficulties in obtaining employment. The judge failed to take into account evidence in the appellants' bundles. It was not open to the judge to conclude that the appellants were employed. There was evidence of high unemployment which the judge failed to consider.

Respondent's submissions

14. Ms Cunha submitted the judge's failure to consider material in the appellants' bundles was immaterial given the reason for dependency was irrelevant. The judge was entitled to take into account why there was no reason given in the appellants' statements that they were not working. The challenges amounted to disagreements and the judge's findings were not perverse or speculative, but based on the evidence before him.
15. Ms Cunha submitted there was no explanation before the judge as to how the appellants and their families could survive on the sponsor's remittances. There was no explanation for why they were able to survive for a year without money from the sponsor. The appellants were not dependent on the sponsor. The remittances were not to provide for the appellants' essential needs.
16. Ms Cunha submitted the judge did not find the third appellant's claim to be dependent on the sponsor credible. Her witness statement was inconsistent with the tenancy agreement and this matter was put to the sponsor in evidence: see [36]. The third appellant had failed to show she had left her husband and her lack of credibility undermined the appellants' claims to be dependent on the sponsor. Overall, the judge did not find the appellants' claims to be dependent credible. The grounds argue the judge should have decided differently, but disclose no error of law.
17. In response, Mr Mustafa submitted the judge was influenced by the appellants' unemployment which was not a relevant consideration and therefore the judge erred in law. There as no clear finding on credibility and the judge had failed to make relevant findings. The appeal needed to be reconsidered and remitted to the First-tier Tribunal given the procedural unfairness.

Conclusions and reasons

18. It is apparent from [8] to [14] of the decision that the judge took into account all the evidence before him and from [15] to [22] that he properly directed himself in law. I am satisfied the judge considered the evidence in the round in coming to his conclusions.

19. It is the appellants' case that they rely solely on the money sent by the sponsor to support themselves and their families and they have no other source of income. At [27] the judge acknowledged: "The account offered by the appellants in their statements, and repeated by the sponsor in his oral evidence, was that the remittances from the sponsor in the UK are the sole income into the household where the appellants are living, as nobody who lives there has been in employment for a considerable period of time." It was the appellants' case that their father ran a furniture shop which closed in 2012 and the first and second appellants have been unemployed since then.
20. The judge found that, notwithstanding the substantial sums sent by the sponsor, this was insufficient to meet the essential needs of 13 people. The judge took into account the sponsor's evidence of expenses at [31] in coming to this conclusion and he gave adequate reasons for his findings at [32] to [37].
21. There was no explanation from the appellants or the sponsor for the significant variation in the amount and frequency of remittances or for how the appellants were able to meet their essential needs during periods when no remittances were sent, most significantly a period of over one year from February 2017 to August 2018.
22. There was no obligation on the judge to put matters to the appellants who were represented by Mr Mustafa before the First-tier Tribunal. The appellants and their representatives were well aware that they had to establish the appellants were dependent on the sponsor to meet their essential needs. The burden is on the appellants to provide sufficient evidence to prove their case. The judge was entitled to take into account a lack of evidence and draw adverse inferences. There was no procedural unfairness in the conduct of the appeal.
23. The judge's observation at [34] and reference to a report not in the respondent's or appellants' bundles was not material because the judge relied on the lack of explanation for the first and second appellants' unemployment. The first and second appellants claimed to have been unemployed since 2012. There was no explanation for how they and their families have been able to meet their essential needs over such a long period of time on the funds sent by the sponsor when the documentary evidence demonstrated a significant variation in remittances from 2017 to 2021.
24. In relation to the third appellant, she claimed to have separated from her husband and returned to the family home in 2019. The judge found her account was not credible because it was inconsistent with her evidence that she had lived with her husband's family and there was no evidence of the divorce. In addition, her account was not supported by the documentary evidence produced.

25. The judge gave adequate reasons for finding the third appellant's claim to be dependent on the sponsor was not credible and he was entitled to take this into account in assessing the credibility of the appellants' claim overall.
26. Contrary to the grounds, the judge considered the appellant's circumstances objectively. His findings were open to him on the evidence before him and he gave adequate reasons for his conclusion. The judge took into account all relevant matters and properly directed himself in law. The weight to be attached to the evidence was a matter for the judge. There was no procedural unfairness in the conduct of the appeal.
27. Accordingly, I conclude there is no material error of law in the decision promulgated on 14 January 2022 and I dismiss the appellants' appeals.

Notice of Decision

Appeal is dismissed.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 5 September 2022

TO THE RESPONDENT FEE AWARD

As I have dismissed the appeal, we make no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 5 September 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

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2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.