**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006150**
**First-tier Tribunal No: EA/02716/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 25 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**ALI RAZA**
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr M Fazli , Counsel, instructed by Lamptons Solicitors
For the Respondent: Ms A Everett, Senior Presenting Officer

**Heard at Field House on 5 May 2023**

**DECISION AND REASONS**

## Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Seelhoff ("the Judge"), promulgated on 23 September 2022 following a hearing held on 16 September 2022. By that decision, the Judge dismissed the Appellant's appeal against the Respondent's refusal of his application under the EUSS.

2. The Appellant, a national of Pakistan, had asserted that he was dependent on his brother's spouse, an EEA citizen ("the Sponsor"). The

Respondent was not satisfied that he was dependent as claimed. The appeal to the First-tier Tribunal was brought under the Immigration (Citizens' Appeals Rights) (EU Exit) Regulations 2020.

**The Judge's decision**

3. In the lead up to the appeal hearing, the Appellant had accepted that the two core issues falling for determination by the Judge were:

   (a) whether the Appellant was related to the Sponsor; and, if he was,

   (b) whether or not the Appellant was dependent on the Sponsor within the meaning of that term as defined in relevant well-known case-law.

2. Having set out the general background, the Judge confirmed that he had been provided with a Respondent's bundle and an Appellant's bundle which included witness statements for the Appellant, the Appellant's brother, the Appellant's father, the Sponsor, and a number of friends and acquaintances. In addition, the bundle contained various other documentary evidence including bank statements and letters relating to employment and accommodation. The Judge set out in some detail the oral evidence given at the hearing which had come from the Appellant, his brother, and their father. Notably, the Sponsor herself had not given evidence, nor had any of the other individuals who had provided witness statements.

3. Under the subheading "Findings", the Judge conducted a detailed consideration of what he regarded as the core evidence before him, namely that emanating from the Appellant and his brother, together with various documents. The Judge expressed concern with omissions in the evidence, particularly relating to past employment by the Appellant and missing bank statements relating to the brother during a period from September 2019 onwards. For reasons set out between [36] and [52] (which I do not propose to summarise at this stage), the Judge ultimately concluded that whilst the Appellant "*may*" have been "*intermittently*"

dependent on his brother (and presumably by extension, the Sponsor), and whilst it "*may even*" have been that the Appellant was dependent as at the date of hearing, he was not satisfied that there had been continuous dependency throughout the period of the Appellant's residence in the United Kingdom, a period running from December 2014. In light of that conclusion the judge found that the Appellant could not meet the definition of a dependent relative under the EUSS and the appeal was accordingly dismissed.

**The grounds of appeal**

4. Five grounds of appeal were put forward and I will summarise them briefly as follows.

Ground 1: The Judge was wrong not to have given weight to the fact that the Appellant's parents had been granted settled status under the EUSS.

Ground 2: The Judge had failed to properly assess a letter from the Appellant's former employers KFC and had not properly considered oral evidence about that employment.

Ground 3: There had been a failure to consider evidence relating to dependency, particularly from the Appellant's father and a number of other individuals, together with that contained in certain documents.

Ground 4: The Judge erred in failing to consider an alternative argument that the Appellant was in fact a member of the Sponsor's household.

Ground 5: The Judge had wrongly accused the Appellant's Counsel (not Mr Fazli) of "*misleading*" the Tribunal and that this had in turn created an appearance of bias, which amounted to procedural unfairness.

1. In the grant of permission by the First-tier Tribunal it appears as though the relevant judge was confining his decision to Ground 5. However there was no compliance with the guidance set out in EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 00117 (IAC) and thus proceed on the basis that all of the grounds are before me. Both parties agreed with that position.

**The hearing**

2. Time was taken to read the relevant parts of the transcript obtained from the recording of the hearing before the Judge. Mr Fazli provided me with a copy of the result of a complaint which had been made by Counsel who appeared before the Judge to the former President of the First-tier Tribunal. Mr Fazli acknowledged that some of the force of Ground 5 might have been diluted by the content of the transcript, but he maintained this aspect of the challenge.

3. On Ground 2, he stood by what was said in the written grounds. In respect of Ground 3, he submitted that the Judge's failure to have expressly dealt with relevant evidence contained in witness statements and the oral evidence of the father could cumulatively have led to a different outcome on the question of dependency. In respect of Ground 4 and having looked at the relevant materials, I indicated that I was satisfied that the membership of the household point had not been taken at any stage until raised in the grounds of appeal. Mr Fazli suggested that it was a "Robinson obvious" point. In respect of Ground 1, Mr Fazli submitted that the parents' circumstances were a relevant consideration and some weight should have been given to it.

4. Ms Everett submitted that the relevant findings made by the Judge in respect of the complaints raised under Grounds 1–4 had all been open to him on the evidence. The Judge had dealt with the core evidence and had directed his attention to the relevant legal test. In respect of Ground 5, the transcript indicated that whilst the term "*misleading*" may have

been strong, it did not in all the circumstances amount to either judicial bullying or any appearance of bias.

5. At the end of the hearing I reserved my decision.

## Conclusions

6. The Judge considered a good deal of written evidence and had heard oral evidence from three witnesses including the Appellant, his brother, and their father. The overarching issue of dependency was of course fact-sensitive in nature. In these circumstances I remind myself that appropriate judicial restraint should be exercised before interfering with a decision of the First-tier Tribunal. That is not to say that there is a presumption of an absence of legal errors, simply that I should read the decision sensibly, holistically and without in any way seeking to simply substitute my own views for that of the judge who heard and considered all the evidence.

7. With this in mind, I am satisfied in all the circumstances that the Judge made no material errors of law. I say this for the following reasons, addressing Ground 5 first, followed by the other four in order.

## Ground 5

8. For the record, the relevant passages in the transcript run from internal page 29 to the beginning of internal page 31. The context of the relevant passages is as follows. Bank statements for the Appellant and his brother had been provided. As a matter of incontrovertible fact the two sets of bank statements did not independently cover the same period of time: the Appellant's bank statements covered a number of shorter periods within the overall period of August 2018 to September 2022: [43]. The brother's bank statements covered only March 2018 to September 2019:

[44]. The significant gaps was highlighted by the Judge as a significant evidential problem.

9. On this issue, the Appellant's Counsel submitted (transcript, beginning line 20, internal page 29) that, "*The witness statements that are, sorry the bank statements that are provided in the bundle, in relation to the appellant and the appellant's brother, cover jointly a period starting from March 2018 and comes to 2022*". The Judge then reiterated the point that there was a gap in terms of the brother's bank statements. Counsel responded by apparently refining his first submission by stating that the bank statements, "*jointly* [covered] *almost all the period ...*" (transcript, line 4, internal page 30). The Judge described the submission being put forward as "*slightly misleading*" on the basis that the submission implied that the bank statements from both individuals covered the same period (transcript, line 6, internal page 30). Counsel took objection to the use of the word "*misleading*". The Judge re-emphasised the concern that he was attempting to assess the question of dependency in the absence of any bank statements relating to the brother (and/or the Sponsor) for a period of some three years in total and that this was an evidential difficulty in the Appellant's case. Again, Counsel was concerned with his submission being described as "*misleading*" (transcript, line 19, internal page 30). The Judge responded to that point by saying "*Okay*", but he stated that it was important to distinguish between the implications of the submission and the state of the evidence in support of it. The Judge stated that he had found Counsel's answer to the query put to be "*misleading*" and asked Counsel to be "*more careful and more specific in future*" (transcript, line 29, internal page 30). The Judge reiterated that he was requesting Counsel to be "*more specific in your submissions in future*" (transcript, line 32, internal page 30). Counsel then apologised for not being able to be more specific and the Judge suggested that they move on to other matters.

10. In my judgment, the term "*misleading*", whilst perhaps strong in nature, did not, by a wide margin, indicate judicial bullying, nor did it give rise to any perceived bias on the Judge's part. In essence, I agree with

the observation of the former President of the First-tier Tribunal when rejecting the complaint: "*It may be that [the Judge] could have worded his concerns differently …*".

11. Context is all-important here. There was quite clearly a gap in the evidence relating to bank statements and the Judge had every reason to raise this concern with Counsel. Counsel's initial submission was that the bank statements jointly covered a period said to be run from March 2018 until 2022. The Judge interpreted that submission as meaning that the bank statements of *both* individuals covered the *same* period. In my judgment, that was an entirely reasonable interpretation and indeed I would think that the majority of judges receiving the same submission would have taken it in the same way.

12. It is right that Counsel then refined the submission by inserting the word "almost" in terms of the period covered. However, the point remained unclear because the implication was that the bank statements nonetheless covered almost all of the same period. That was simply not correct because, as mentioned earlier, there was a gap of some three years in respect of the brother's bank statements. In my view, it is sufficiently clear, and would indeed have been clear enough to a reasonably well informed observer, that when the judge used the term "*slightly misleading*" and "*misleading*", he was in truth simply reflecting the inaccuracy of Counsel's submission in the context of his (Judge's) reasonable understanding of that submission.

13. From Counsel's perspective, appears as though the intention behind the submission was that when taken together, the bank statements covered the period 2018 to 2022, albeit that they did not independently cover the entirety of that period. Yet the submission was not clearly put and the Judge cannot be criticised for having taken a different view of the argument. The Judge was justified in asking for Counsel to be "*more specific*" in terms of the submissions made. It may be at that point that Counsel recognised the lack of clarity thus far and

acknowledged the point at the top of internal page 31 of the transcript when he apologised for not being "*more specific*".

14. In light of the foregoing, and whilst the Judge could possibly have used other terms such as "inaccurate" or "incorrect", the term he did in fact employ was not indicative of any bias, actual or perceived, such that it led to anything remotely approaching procedural unfairness. I reject Ground 5.

**Ground 1**

15. The Judge clearly engaged with the Appellant's parents' circumstances and their grant of settled status under the EUSS: [36]. The reasons set out in that paragraph were adequate and there was no obligation on the Judge's part to give weight (or at least any material weight) to the circumstances of other members of the family unit. In discussion at the hearing before me, Mr Fazli accepted that the mere fact that an individual lived together with other family members did not mean that they were for that reason alone dependent. By way of example only, an adult child may be residing with other siblings and parents in the same house, but might be earning a very significant amount of money; clearly, they would not be dependent. I reject Ground 1.

**Ground 2**

16. There is no substance to this ground. The Judge considered the KFC letter and found it to be deficient in material respects, in particular the omission of relevant information. What he said at [47] was more than adequate. I reject Ground 2.

**Ground 3**

17. I am fully satisfied that the Judge was aware of all the evidence before him. He noted the existence of witness statements from the individuals who did attend the hearing, together with those who did not. The Judge set out the oral evidence in some detail. It is abundantly clear that he regarded the core evidence as emanating from the Appellant and his brother. It was their evidence that related to past employment and the claimed transactional issues relating to bank accounts and such like, and the Judge engaged with this evidence in a perfectly sustainable manner. With respect, the father's evidence really took matters no further. The witness statement was extremely brief and the oral evidence added little. In respect of other individuals who did not attend the hearing, it is plain that in those circumstances little, if any weight, would have been attributable to their statements. It is trite that a judge need not refer to each and every item of evidence before them. I am satisfied that the Judge had all of the evidence in mind, but was not obliged to deal expressly with the evidence of those individuals when setting out his findings. In respect of the documents referred to in Ground 3, the Judge did deal with the issue of who had paid for certain expenses such as rent and there was no error here. I reject Ground 3.

**Ground 4**

18. I am satisfied that no mention was made at any stage of an alternative submission to the effect that the Appellant was a member of the Sponsor's household. That much is clear from the Appellant's skeleton argument and on the face of the Judge's decision. Mr Fazli has suggested that it was a "Robinson obvious" point. I disagree. Quite apart from nothing being said about it at any stage without any explanation for the failure to have raised what was apparently an obvious issue, this was not even a potentially straightforward case of the Appellant living in the same house as the Sponsor. The Appellant's brother and the Sponsor lived elsewhere. Whatever arguments might have been put about the EEA national paying for the accommodation and

the relevance of that, nothing was said about it at the hearing and it simply underlines the fact that it was not an "obvious" point and certainly not one with a strong prospect of success. In the circumstances of this case, the Judge in no way erred by failing to address a point that was not argued before him. I reject Ground 4.

**Anonymity**

19. There is clearly no justification for making an anonymity direction in this case.

**Notice of Decision**

**The decision of the First-tier Tribunal did not involve the making of an error of law.**

**That decision shall stand and the Appellant's appeal to the Upper Tribunal is accordingly dismissed.**

**H Norton-Taylor**
**Judge of the Upper Tribunal**
**Immigration and Asylum Chamber**
**Dated: 12 May 2023**