



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

**Case No: UI-2022-002207**  
**First-tier Tribunal No: EA/06643/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 24 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

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

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Mehedi Khan, Sponsor.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 18 January 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Jepson ('the Judge') promulgated on the 25 November 2021 in which the Judge dismissed the appellant's appeal against the refusal of an application for a Residence Card as an Extended Family Member of an EEA national exercising treaty rights in the United Kingdom.
2. The Judge notes a number of agreed issues, being that the appellant is a national Pakistan, that the Sponsor holds an Italian passport, that the application for entry clearance was made on 18 December 2020, and that the date of refusal was 24<sup>th</sup> March 2021.
3. The Judge notes at [3] of the decision under challenge that neither party nor a representative attended the hearing as a result of which the Judge decided to determine the merits of the appeal, as the Judge was lawfully entitled to do, on the papers.

4. The Judge's findings are set out from [13] of the decision under challenge. I do not find it made out that the Judge did not consider the evidence with the required degree of anxious scrutiny when arriving at those findings.
5. The Judge found in favour of the appellant at [16] relating to the Sponsor's status, accepting that the Sponsor is exercising treaty rights in the UK.
6. At [17] the Judge finds there is insufficient evidence to show the appellant was living in the same household as the EEA national after the EEA national obtained his Italian citizenship, which the Sponsor confirmed was on 9 December 2016. This is a sustainable finding.
7. At [19] the Judge correctly notes that the core issue is that of dependency. The Judge at [21] accepted that a fairly large number of money transfer receipts had been submitted covering quite a long period of time and that various receipts had been provided which are said to have originate from Pakistan showing what appeared to be for everyday purchases.
8. The Judge expresses concern at [24] as to whether the claimed support of £155 per month was in the "Sponsors grasp" as the evidence showed the Sponsor had a fairly low income with nothing apparently left in his bank at the end of the month; raising the question in the mind of the Judge as to where the money comes from that the Sponsor claims to send to the appellant.
9. At [30 - 31] the Judge writes:
  30. All of the above issues caused me significant doubts about the evidence presented. Whilst I acknowledge there is quite a lot of evidence showing money being sent, the problems within those receipts undermine any suggestion they relate to essential support. If the Appellant is working - as suggested - then to what extent is help needed? He presents as being entirely dependent in these proceedings rather than, for example, in need of partial assistance.
  31. The evidence supplied from Pakistan contains so many unexplained elements that I give them minimal weight. Although not beyond the realms of possibility, someone would be able to produce receipts from buying food back in 2019 to support an entry clearance application in 2021. It would, in my judgement, be very hard for every single receipts - be it from a food shop or somewhere selling car parts - to bear the Appellant's name. Why does the spelling of that name vary throughout?
10. The Judge was not satisfied to the required standard that the appellant and sponsor are related as claimed or otherwise, that the Sponsor is in a position to provide support as claimed, that the appellant requires such support for his essential needs, or that the appellant is dependent upon his sponsor [34].
11. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 30 March 2022 on the basis it was said to be arguable that the Judge did not direct himself to the second limb of Rule 28(b) when deciding to proceed with the hearing which, given the concerns raised by the Judge about the unanswered questions about the sponsor's circumstances, it was considered materially impacted on the assessment overall.
12. The Secretary of State has filed a Rule 24 response dated 21 April 2022 in which she opposes the appeal. [6 - 8] of that document read:
  6. The FtT approached the appeal on the basis of the issue of dependency and correctly self-directed himself at [19].
  7. The fundamental problem with the Appellant's application is that the burden of proof is on him and he has failed to discharge this upon the evidence presented [30]. The FtT noted at [22] that he knew very little about the

Sponsor's position, which was equally so of the Appellant [25]. The FtT] noted the number of money remittances but noted that he had significant doubts about the evidence presented [29] such as the money transfer receipts being inconsistent with the Appellant's account of being unemployed or indeed who the remittances were intended for [27] or whether they went to his full or partial purported dependence and whether that related to the Appellants essential needs [30] given that there was so many unexplained elements [31]. It may be that the Appellant was assisted by failing to attend the hearing but in the absence of any other details is entirely a matter for him as to how he conducts his appeal.

8. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

### Discussion

13. The Tribunal is grateful for the Sponsor's attendance and the assistance he provided in discussions relating to the appeal.
14. When asked about the Judge's concerns about the quality of the evidence which had been provided, and omissions, he stated that he had sent all the papers he had, everything had been sent. That may be the case, but that submission does not, on its own, address the concerns the Judge had in relation to the weight that could be placed upon that evidence.
15. The submission by the Sponsor that the Judge did not understand the evidence, or did not understand the papers properly, has no merit. Having reviewed the information and evidence available to the Judge the concerns recorded in the determination have not been shown to be irrational or outside the range of findings available to the Judge on the evidence.
16. The Sponsor repeated on more than one occasion that he supported the appellant and that he had sent remittances on a regular basis to the appellant, but it is settled law that sending remittances per se does not establish an ability to satisfy the relevant test under the Immigration (European Economic Area) Regulations 2016. The test, as applied by the Judge, is that the appellant must prove that he needs such remittances to meet his essential needs.
17. The Judge sets out in the determination at [27] issues with the money transfer receipts, one of which referred to the appellant's occupation as "business" when he claimed to be unemployed, albeit that other receipts did indicate he is unemployed. At [28] the Judge sets out concerns regarding other documents provided from Pakistan which relate to evidence the Judge had the opportunity to properly consider.
18. Having considered the submissions made, the determination in detail, and supporting evidence that was made available, I accept that dealing with the relationship issue, which the Judge acknowledges that [32] was not raised by the ECO as a specific issue, may amount to procedural unfairness in that there was no indication that the Judge indicated to the appellant that that matter was going to be considered, which denied the appellant the opportunity to provide evidence in support of the claimed relationship. I do not, however, consider such error material.
19. The Judge sets out the correct legal test and clearly focused on the main question in this appeal which was whether the appellant could satisfy the test under the Regulations. It is not made out the Judge's finding, that in light of the difficulties recorded in the evidence it was not possible to place sufficient weight upon the material provided to show that the relevant test could be satisfied, is not a finding within the range of those reasonably available to the Judge on the evidence.

20. I do not find the appellant has established the Judge has erred in law in a manner material to the decision to dismiss the appeal.
21. I find no procedural irregularity in the Judge determining the merits of the appeal on the papers. As there was no attendance, no explanation for absence, and no application for an adjournment, the Judge was entitled to determine the matter on the papers. The Judge's comments in relation to the evidence and the problems that arise from the same is a reflection of the care in which the Judge considered that evidence. The Judge sets out the reasons why it is found no weight can be placed upon that evidence which is a sustainable finding in what is an adversarial system. It is not made out there was anything that required the Judge to direct that the matter be heard in open court with the attendance of either party. It is clear having discussed the matter with the Sponsor, who was unable to satisfy me that the Judge's findings were outside the range of those reasonably available to the Judge on the evidence, that such a course of action would have resulted in a decision that was any different to that the Judge arrived at on the papers in relation to the issue of dependency.

**Notice of Decision**

22. There is no material error of law made out in the Judge's decision. The decision shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 January 2023**