



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

**Case No: UI-2022-004126**  
**First-tier Tribunal No:**  
**EA/52321/2021**  
**LE/00022/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MR BADAR ISLAM**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr H Broachwalla, Counsel, instructed by Lamptons Solicitors

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

**Heard at Field House on 1 February 2023**

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a citizen of Pakistan who has resided in Italy at all material times. His brother (the Sponsor) resides in the United Kingdom

and is a German national. By an application made on 29 December 2020, the Appellant applied for a family permit under the Immigration (European Economic Area) Regulations 2016 (the Regulations). This was based on the claimed dependency of the Appellant on the Sponsor, pursuant to regulation 8 of the Regulations. The Respondent was not satisfied that the Appellant was in fact dependent on the Sponsor as claimed and the application was refused by a decision dated 22 April 2021.

### **The decision of the First-tier Tribunal**

2. The Appellant appealed to the First-tier Tribunal and by a decision promulgated on 17 June 2022 First-tier Tribunal Judge Mills dismissed the Appellant's appeal, ultimately concluding that the Appellant was not dependent on the Sponsor. In so concluding, the judge noted that the Appellant had had a previous appeal concerning the same issue dismissed as recently as December 2020. The previous judge (Judge Kinch) had concluded that the Appellant was not dependent on the same Sponsor in part because of a lack of evidence about the Appellant's financial circumstances in Italy.
3. Judge Mills directed himself correctly in law as to the core issue, that being dependency, and in particular whether the funds which were accepted had been remitted by the Sponsor to the Appellant over a relatively lengthy period were essential in order for the Appellant to meet his basic living needs in Italy. The judge accepted that the provision of fairly significant sums of money paid over time raised what he described as "prima facie evidence" of dependency. However, the judge went on to find that the Sponsor's evidence raised material concerns in several respects relating to inconsistencies and a lack of apparent knowledge about the Appellant's situation, both in the past and as at the date of hearing.

4. In addition to those concerns, the judge took the view that the Appellant would have obtained “appropriate employment” in Italy following the pandemic, or, if this had not been possible, that the Appellant would have had to return to Pakistan to reside with his family there. The judge was also of the view that the individual with whom the Appellant lived in Italy, being the landlord, would have known more about the Appellant’s financial circumstances and the absence of evidence in his witness statement to that effect raised concerns as to the claimed dependency as a whole.
5. The judge concluded that in light of the evidence the Appellant was not dependent as claimed and the appeal was accordingly dismissed.

### **The grounds of appeal**

6. The grounds of appeal in essence assert that the judge failed to consider all of the relevant evidence, focusing principally on that of the Sponsor, that he engaged in impermissible speculation and had failed to address relevant matters contained in the evidence.
7. Permission was granted on all grounds.

### **The hearing**

8. At the hearing I heard concise and helpful submissions from both representatives.

### **Conclusions**

9. I conclude that the judge has materially erred in law. In so doing I bear very much in mind the need for judicial restraint before interfering with a decision of the First-tier Tribunal having regard to numerous pronouncements to this effect emanating from the Court of Appeal in recent years. I have sought to read the judge’s decision sensibly and holistically. It is of course the case that a judge need not address each and every item of evidence before them, nor are they obliged to give

reasons for reasons. Having said that, it is incumbent on a judge to deal with aspects of evidence relevant to the legal framework with which they are concerned, in this case dependency.

10. On the face of what was presented, the judge was entitled to find that the Sponsor's evidence was deficient in certain respects. The judge was also clearly entitled, indeed obliged, to take the previous decision of the First-tier Tribunal from 2020 as a starting point. These matters clearly counted against the Appellant.
11. Having said that, there was a relatively detailed witness statement from the Appellant before the judge, together with other documentary evidence which went not only to the receipt of funds from the Sponsor (which had increased over time and in accordance with evidence contained in the Appellant's witness statement), but also to the question of essential living needs in Italy, for example, groceries and utility bills.
12. Looking at the judge's decision sensibly and holistically, it is difficult to discern that the judge adequately addressed the Appellant's own evidence and the supporting documentary evidence when considering the question of dependency. For example, there was no reference to the Appellant's evidence relating to his inability to have claimed unemployment benefit in Italy and the need for an increased amount of funds remitted by the Sponsor, amongst other matters raised in that statement.
13. Further, in my view the judge has, with respect, engaged in impermissible speculation in respect of at least two matters. First and foremost, at [33] the judge's conclusion that the Appellant would have in some way obtained "appropriate employment" by the middle of 2021, or at the latest the spring the following year, was speculative and did not have due regard to the Appellant's own evidence (this is not to say that that evidence had to be accepted, but it required consideration and reasons, if rejected) . Second, although the landlord was said to be a

friend, it was also impermissibly speculative for the judge to have “expected” that individual to have commented on the fact or the nature of any dependency by the Appellant on the Sponsor.

14. These considerations in my judgment amount to errors of law which were material to the outcome of the appeal. The concerns raised with the Sponsor’s evidence were in effect not balanced against, or considered in light of, the rest of the evidence. It is not inevitable that the outcome would have been the same even if the other evidence had been properly addressed. Ultimately, the point is that the relevant evidence had to be met head-on insofar as it was directly relevant to the issue of dependency and, if it were to be rejected, reasons for this were required.
15. In the exercise of my discretion it is appropriate to set the judge’s decision aside.

### **Disposal**

16. As to disposal, remittal to the First-tier Tribunal is an exception to the general rule. However, in this case it would be artificial to preserve only certain findings of fact relating to the Sponsor’s evidence. There needs to be a wholesale reconsideration of the evidence involving sufficiently detailed findings of fact on the evidence. Thus, I do remit this appeal to the First-tier Tribunal to be considered again with no preserved findings of fact. The previous First-tier Tribunal decision from 2020 will once again be a starting point. The Appellant will have an opportunity to adduce any further evidence and he may be well advised to do so given that dependency needs to be shown to exist on a continuous basis. Whether or not those representing the Appellant would seek to follow a process whereby evidence from the Appellant might be given from Italy is a matter for them.

**Notice of Decision**

17. **The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.**
18. **The appeal is remitted to the First-tier Tribunal.**

**Directions to the First-tier Tribunal**

- (1) This appeal is remitted to the First-tier Tribunal (Birmingham hearing centre) to be re-heard by a judge other than Judge Mills;
- (2) There shall be no preserved findings from the decision of Judge Mills.

**H Norton-Taylor**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 23 March 2023**