



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

Case No: UI-2022-002299

First-tier Tribunal No:  
EA/09647/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 15 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Muhammad Qasim**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Chohan, Counsel, instructed Direct Access

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 9 February 2023**

**DECISION AND REASONS**

1. The appellant is a national of Pakistan. On 16 December 2020 he applied for an EEA Family Permit as the extended family member of Mr Jahangar Malik, his paternal uncle, under the Immigration (European Economic Area) Regulations 2016. The application was refused by the respondent for reasons set out in a decision dated 27 April 2021. The respondent concluded the appellant had failed to provide evidence that his paternal uncle, the EEA national family member was exercising treaty rights in the United Kingdom. Furthermore, the respondent was not satisfied that on the basis of the evidence provided in support of the application, the appellant is dependent upon the sponsor.

2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Freer for reasons set out in a decision promulgated on 25 January 2022. By the time of the hearing before the First-tier Tribunal the respondent accepted Mr Jahangar Malik was exercising treaty rights in the United Kingdom. The only issue in the appeal was whether the appellant is dependent on the sponsor. Judge Freer was not satisfied the appellant is dependent on his paternal uncle as required.
3. The appellant claims there was evidence before the First-tier Tribunal of money transfers to the appellant from his uncle, both when his uncle previously lived in Italy, and since his arrival in the UK. The appellant refers to the decision in Reyes (EEA Regs: dependency) [2013] UKUT 00314 (IAC), in which it was held that regular payments over a significant period could show dependency. The appellant claims Judge Freer materially erred in evaluating the evidence before him. The appellant accepts he had not provided bank statements, but in any event, the money transfers were made by cash through Western Union. A copy of the appellant's bank statement covering a period of two years is attached to the grounds of appeal. The statement shows a credit of 60,000 Pakistani Rupees, with one substantial credit of 55,000 Pakistani Rupees. The appellant claims Judge Freer failed to give any proper and sensible cogent reasons for his decision and placed too little weight on relevant matters and/or placed too much weight on irrelevant matters.
4. Permission to appeal was granted by First-tier Tribunal Judge Dainty on 20 April 2022.
5. Before me, Mr Chohan submits Judge Freer unduly focused upon the absence of bank statements and said, at [31], that the failure to produce readily available and relevant evidence was a cause for concern that led the judge to attach less weight to the evidence of the appellant and sponsor. Mr Chohan submits that Pakistan operates a 'cash economy' and so it would be very difficult for the appellant to have evidence of his outgoings. The appellant had explained in his witness statement that money transfers were made at intervals because of the 'transaction costs' each time money is remitted. The money was collected in cash by the appellant and he had explained in his statement that he had been unable to continue with his studies because of the health of his father. He had provided, at pages 50 and 51 of the appellant's bundle, evidence of the payment of utility bills such as gas and electricity in cash. Mr Chohan submits the sponsor had also given evidence to the effect that the appellant has no other income. Mr Chohan submits the evidence of money transfers over a prolonged period is good evidence that the appellant requires the funds he receives from his paternal uncle to meet his essential living needs.
6. In reply, Mr Williams submits Judge Freer properly noted at paragraph [12] of the decision that the only issue is 'dependency'. Although there was evidence of money transfers from the appellant's paternal uncle, it was unclear what that money was used for. The appellant lives with his parents and his sister. The judge noted, at [28], that the total combined household income and expenditure of the family is wholly opaque. At paragraph [29],

Judge Freer referred to the gas and electricity bills relied upon by the appellant but said that the evidence does not without more, show dependency. At paragraph [30], Judge Freer had regard to the emotional bonds and he noted that it is possible that the funds provided by Mr Jahangar Malik, provide 'family support' for the whole family. Mr Williams submits Judge Freer was unable to work out what the money provided by Mr Jahangar Malik was used for. He submits Judge Freer found the appellant has not established he is dependent upon Mr Jahangar Malik to meet his essential living needs and so any reference thereafter to the appellant being able to go out to work and the absence of any explanation as to what he does, is immaterial to the outcome of the appeal. Mr Williams submits Judge Freer properly noted that evidence such as bank statements can be of pivotal importance because they allow cross referral of income and expenditure.

### Decision

7. The appellant claims to be dependent upon his paternal uncle. Mr Jahangar Malik attended the hearing of the appeal and gave evidence as set out in paragraphs [13] to [19] of the decision of Judge Freer. The appellant lives in Pakistan with his father, mother and his sister. The accommodation they live in is a house belonging to the appellant's parents. The evidence of Mr Malik was that the appellant takes care of his father who is in ill health. The evidence was that money is sent to the appellant through Western Union. The appellant withdraws cash to spend on his living expenses such as food, clothing and medication.
8. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs.
9. More recently, in Latayan v SSHD [2020] EWCA Civ 191, Jackson LJ said:
 

“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."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

10. Whether the appellant is dependent on the sponsor is therefore a factual question for the judge to assess on the evidence before the Tribunal. The burden rested upon the appellant.
11. Judge Freer noted, as Mr Williams submits, at paragraph [28] of his decision that "*..The total combined household income and expenditure of this large family is wholly opaque..*". He clearly had regard to the gas and electricity bills that were relied upon by the appellant, and was entitled to say that those bills, do not without more, show dependency. It is true as Mr Chohan submits that the bills are endorsed as having been paid in cash, but they are addressed to the appellant's father, Abdul Rashid, not the appellant. Judge Freer said at paragraph [30] that it is certainly possible, that the funds received by the appellant go, in whole or in part, for 'family support'. At paragraph [37], Judge Freer found that the appellant has no dependency for his necessities of life at all, but could be giving money to his sister or his parents or all of them. At paragraph [38], Judge Freer said:

"The transfers shown in the documents may be nothing to do with essential needs of the Appellant. If they are for some other person's essential needs, the claim must fail; if they are for needs of his that are not essential, the claim must fail."
12. It is clear from the authorities that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. Families often send money to each other, even regularly, across international borders and that can be for a whole range of reasons. Here, there is a requirement of dependency to meet essential living needs, not just evidence of regular money transfers or evidence of money transfers over a prolonged period.
13. Although Judge Freer commented that the appellant is very probably exercising a dependency of choice, I am satisfied that that is immaterial to the outcome of the appeal. Reading the decision as a whole, it is clear Judge Freer was satisfied that there have been transfers of funds, but was not satisfied that the appellant has established that on balance, the funds are necessary to enable the appellant to meet his basic needs. His accommodation is plainly taken care of by the fact that he lives with his parents in accommodation owned by them. Beyond evidence of money transfers, even over a lengthy period, there a distinct and noticeable

absence of any evidence to support the claims made by the appellant that he requires the financial support to meet his essential needs. It was the paucity of the evidence regarding the essential living needs of the appellant and how they are met that was of concern to the Judge.

14. A judge is not required to give reasons for their reasons. I accept a full breakdown of the expenses incurred is not required and that in a cash economy, it will very often be difficult to obtain receipts to substantiate the expenditure, but plainly some breakdown that is supported by cogent evidence to support the claim that essential living needs are met by the money transfers is capable of going a long way to discharging the burden upon an applicant that they need the material support of the Community national in order to meet their essential needs. Here, there was a very broad and vague claim set out by the appellant in paragraph [11] of his witness statement that the sponsor decided to help him financially, and thus he became dependent on the sponsor. The evidence of the sponsor was that the appellant withdraws cash to spend on food. His living expenses were said to be food, clothing and medication. I pause to note that there is no evidence that the appellant himself has any particular health issues or requires regular medication and so the costs of medication must relate to the medication required not by the appellant, but by his father. The evidence, Judge Freer found, was lacking in circumstances where several members of the same family all live together, and the funds transferred appear to have been provided by way of support for the family generally, rather than to meet the essential living needs of the appellant. Reading the decision as a whole it is clear the judge did have in mind the correct test and the evidence of the appellant.
15. I have reminded myself of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy of reasons means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. Although the decision of Judge Freer is not as well-structured or well-expressed as it might be, to identify an error of law there has to be more than a general literary criticism. Although "error of law" is widely defined, the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in AH (Sudan) v SSHD at [30]:

"Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."
16. The decision is to be read looking at the substance of the reasoning and not with a fine-tooth comb in an effort to identify errors. Reading the decision as a whole, it is in my judgement clear there was a paucity of material evidence and it cannot be said that the Judge's analysis of the evidence that was before the Tribunal is irrational or perverse. I am satisfied that Judge Freer's decision is a sufficiently reasoned decision that was open to him on the evidence.

17. In my judgment, the grounds of appeal do not disclose a material error of law capable of affecting the outcome of the appeal.
18. It follows that I dismiss the appeal.

**Notice of Decision**

19. The appeal is dismissed

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12 July 2023**