



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002223
EA/52843/2021
IA/1158
1/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 4 December 2023**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Ahmed Mahmud
(no anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan, Counsel instructed by Morgan Hill Solicitors
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 13 October 2023

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on the 12th March 1990. He appeals with permission against the decision of the First-tier Tribunal (Judge Sweet) to dismiss his appeal under the Immigration (European Economic Area) Regulations 2016.
2. The origins of this appeal lie in the Appellant's application, made on the 15th November 2020, for a family permit to enter the United Kingdom as an 'extended family member' of his Austrian aunt, Mrs Farhat Khawar, who is exercising treaty

rights in the UK. The question raised by the ECO, and then by the First-tier Tribunal, is whether the Appellant is able to demonstrate that he is dependent upon his aunt.

3. The relevant legal provisions are found in regulation 8 of the Immigration (European Economic Area) Regulations 2016:

“Extended family member”

8.—(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national’s household; and either—

(i) is accompanying the EEA national to the United Kingdom or wants

to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national’s household.

...

4. The Judge of the First-tier Tribunal was not satisfied that the dependency, required by Reg 8(2)(b), could be established. The Sponsor had only been earning £604 per month at the date of application, although that had by the time of the appeal she claimed it had risen to about £800. She told the court that she sends her nephew £250-300 per month because he has never worked and needs her to support him. The Judge found the evidence of these remittances to be “spasmodic” and said that it was not clear how she sent the money. She had given contradictory evidence about her own circumstances, specifically how many of her adult children were still living at home with her and whether they contributed to the household budget. Her husband was in receipt of a pension income of approximately £285 per month from the UK government, and just over 500 Euros from the Austrian. She believed that he paid a mortgage on their five bedroomed home, and utility bills out of this but did not know what those payments might amount to.
5. As to the Appellant himself, the evidence was that he combined the 25-30,000 rupees given to him by his aunt with the 18,000 rupees earned by his brother and this combined pot paid for the rent, bills and upkeep for their families as well as their parents. It was unclear how the family would continue to meet these expenses if the Appellant were to come to the UK, taking with him his

remittances, although the Sponsor suggested that the family might move to a smaller house.

6. Having considered these facts the Tribunal concluded:

15. I accept that it is not necessary to show regular and consistent contributions to the appellant's maintenance, but it was by no means clear (taking into account the overall financial situation of the sponsor and the appellant's family in Pakistan) how she was able to make contributions to the appellant's maintenance, when her income and her spouse's was so limited and incomplete and there was no evidence about what payments were made in respect of their family mortgage (it was a 5-bedroomed house), the utility bills and other expenses.

7. On this basis the appeal was dismissed.

8. The Appellant submits before this Tribunal that the reasoning of the First-tier Tribunal was flawed in the following respects:

- i) The Tribunal failed to identify the applicable legal principles relating to dependency and Article 8. The question was whether the Appellant was dependent upon his aunt for his essential living needs;
- ii) The decision does not reflect a proper assessment of the money transfer receipts. They showed that the Appellant had received an average of £100 a month in the three years prior to the application being made. The decision reached no findings on whether this money was actually sent, and if it was, what it was used for;
- iii) The decision was irrational.

9. At the hearing before me on the 13th October 2023 Mr Terrell for the Respondent conceded that the grounds were made out. In particular he accepted that the Tribunal had not answered the central question identified at (i) above, having found itself distracted by an analysis of the Sponsor's circumstances. I was invited by the parties to remake the decision on the evidence before me.

10. As the Appellant's skeleton argument notes, the relevant principles are set out by the Upper Tribunal in Moneke (EEA-OFMs) Nigeria [2011] UKUT 341 (IAC), and approved in Latayan v SSHD [2020] EWCA Civ 191:

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. ..."

24. As to the approach to evidence, guidance was given by the Upper Tribunal in *Moneke and others (EEA - OFMs) Nigeria* [\[2011\] UKUT 341 \(IAC\)](#):

"41. Nevertheless dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in *SM (India)* (above) dependency means dependency in the sense used by the Court of Justice in the case of *Lebon* [\[1987\] ECR 2811](#). For present purposes we accept that the definition of dependency is accurately captured by the current UKBA ECIs which read as follows at ch.5.12:

"In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations:

*Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her **essential needs** - not in order to have a certain level of income.*

Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national.

In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources.

There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment.

The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived."

42. We of course accept (and as the ECIs reflect) that dependency does not have to be "necessary" in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity: see *SM (India)*. Nevertheless where, as in these cases, able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we

have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.

43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters."

11. I begin therefore by considering whether the Appellant has demonstrated that he is receiving money from his aunt as claimed. In the refusal notice the Respondent accepts that the Appellant has provided some money transfer receipts but states "it is noted that these transfers are dated immediately prior to your application (within the last twelve months). Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom". This latter remark was, I assume, a reference to the claim that Sponsor had been providing for Appellant since as early as 2013. This is not of course an application under Appendix FM. There is no 'specified evidence' requirement, and there was no obligation upon the parties to produce evidence going back any length of time. That said, I am satisfied, having had regard to schedule referred to in the grounds, and to the limited documentary evidence supplied, that roughly speaking the Sponsor has in the past three years sent her nephew an average of £100 per month.
12. The next question was whether the Appellant is dependent upon that £100 pcm for his essential living needs. The Appellant seeks to answer this question in his witness statement. He explains that he lives with his parents and elder brother. He does not state whether his parents have any income but describes them as "vulnerable". His brother works in a factory and earns Rs 18,000 per month. He spends Rs 6000 on food, Rs 3000 on travel, and an average of Rs 5000 per month on utility bills. Then a further Rs 4000-5000 goes on medicines for their parents. The Appellant states that these expenses exhaust his brother's income. There is nothing left to pay the rent of Rs 15,000, and this is where the Sponsor's remittances come in. He states that she sends him Rs 25,000-30,000 per month and from this he pays the rent, contributes to the food and medicine bills, buy clothes and spends Rs 2000 per month on travel expenses.
13. Unfortunately none of that is supported by documentary evidence. The Appellant states that it is "impossible" for him to supply such evidence because he does not have a bank account, and because he pays for things in cash, but I do not understand why that would prevent him providing for instance receipts for groceries or clothing, or for the payment of rent, which appears to be his largest expense. In Latayan the Court confirmed that oral evidence (of which this witness statement, in effect, is) may suffice to discharge the burden of proof but that where, as here, an able bodied adult has chosen to rely on his elderly aunt, this scenario may invite particularly close scrutiny. I am not satisfied that the bare figures I have been given in the witness statement are a sufficient basis to find the burden of proof discharged in establishing dependency. I am further concerned that at least some of items that the Appellant claims as 'essential needs' are not in truth either essential or *his*. On his figures a good proportion of

this household's income goes on medicine (and presumably food) for his parents, not him. He has endeavoured to portray these sums as being essential to him because of the cultural expectation that he provide for his parents, but this is an entirely artificial device: if these figures are correct, his *parents* are dependent upon the sponsor for these things. They are not dependent upon him, since he provides nothing for them. Furthermore the Appellant has listed Rs 2000 per month for his own travel expenses as being "essential" but it is unclear where it is he needs to go, since on his own evidence he is unemployed and stays at home.

Decisions

14. The decision of the First-tier Tribunal is set aside by consent.
15. I remake the decision in the appeal by dismissing the appeal.
16. There is no order for anonymity.

Upper Tribunal Judge Bruce

Immigration and Asylum Chamber

27th November 2023