



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2023-003360

First-tier: EA/51071/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

25th October 2023

Before

**UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

Between

**ALI RAZA JAVAID
(Anonymity order not made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Khan, counsel

For the Respondent: Mr T Melville, Home Office Presenting Officer

Heard at Field House on 3 October 2023

REASONS FOR FINDING A MATERIAL ERROR OF LAW

The Appellant

1. The appellant is a citizen of Pakistan born on 17 August 1998. He appeals against a decision of the First-tier Tribunal dated 21 February 2023 which dismissed his appeal against a decision of the respondent dated 31 March 2021. That decision was to refuse the appellant's application (dated 30 November 2020) for a family permit as an extended family member of his uncle Khalid Ishaq Jhan a Spanish citizen exercising treaty rights in the United Kingdom ("the sponsor"). The appellant's brother Salman Raza had also applied at around the same time to join the sponsor and was refused. The brother appealed his refusal but the two appeals of the appellant and his brother were never joined. The appeal of the appellant's brother's was heard and allowed by Judge of the First-tier Tribunal Atreya sitting at Taylor House on 25 April 2022. Her decision held that the brother was dependent on the sponsor. At first instance the appellant in the present appeal also argued that he was financially dependent upon the sponsor and evidence was given of some remittances.

The Decision at First Instance

2. The judge found that the appellant was not dependent on the sponsor. She distinguished the appellant's appeal from the successful appeal of the appellant's brother on the grounds that some time had elapsed since the brother's appeal was heard and there was insufficient evidence of the sponsor sending money to Pakistan for the benefit of the appellant.

The Onward Appeal

3. The appellant appealed against this decision arguing that the judge had attacked the credibility of the sponsor including whether the sponsor and the appellant's brother were living together when the sponsor had previously been found credible by judge Atreya. The grounds disagreed with the judge Agnew's conclusion that the appellant's brother was not living with the sponsor arguing that there was evidence which post dated and predated the hearing to show that the sponsor and the brother were living in the same household. Permission to appeal was granted by the First-tier Tribunal on the basis that the judge's findings on the credibility of the sponsor were arguably incorrect in the light of the earlier determination in relation to the appellant's brother. It was also arguable that the appellant should be able to adduce further evidence on a **Ladd v Marshall** basis.

The Hearing Before Us

4. In consequence of the grant of permission the matter came before us to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then we would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

5. In oral submissions on behalf of the appellant reliance was placed on the grounds. It was argued that there had been no opportunity to file evidence about the relationship between the appellant's brother and sponsor. This was contradicted by the respondent who argued that the appellant was on notice to provide further evidence of the dependency of the appellant on the sponsor. At the conclusion of the hearing we indicated that we found a material error of law and we would remit the appeal back to the First-tier. We would give our detailed reasons in due course which we now do in this determination.

Discussion and Findings

6. Given the favourable findings on credibility by judge Atreya in or about 2022 it was a material error for the judge to find that the sponsor lacked credibility. Approximately one year had elapsed since that hearing before judge Agnew heard this appeal which is not perhaps such a long period of time to form one of the reasons to distinguish the earlier appeal. Whilst some of the grounds of onward appeal in this case amounted to no more than a disagreement with the First-tier Tribunal decision, (which would not of itself amount of material error of law), there were more substantive points which led us to the conclusion that the First-tier Tribunal determination should be set aside.
7. The judge found the sponsor not credible. She did not accept that the appellant's brother went to live with the sponsor (see [43]) or that the sponsor was sending money to the appellant. We were concerned as to whether there was an issue of procedural fairness in this case. The judge was entitled to raise a concern at the hearing as to what happened when the brother came to the United Kingdom, given what judge Atreya was told would happen, see [41]. This would enable the appellant to ask for an adjournment to provide further evidence to address any concerns which the judge might have had. That appears not to have happened in this case.
8. In indicating to the parties that we would find a material error of law, we made clear that the appellant could put in extra evidence but should be prepared to argue the case while taking notice of what the judge at first instance said about the need for evidence of dependency. At [33] judge Agnew was told that four adults were surviving on the Sponsor's remittances yet there was no evidence of payments since November 2021. Either evidence of remittances should be produced or a full explanation of their absence provided. There should also be evidence, alluded to in the grant of permission of the living arrangements of the appellant's brother, who it was said came to live with the sponsor in or about the New Year 2023. There may have been questions concerning the position of the brother but we find the judge overstepped the mark in finding this was relevant to this sponsor's credibility regarding the remittances to the appellant.
9. We briefly canvassed the views of the parties on the future disposal of the case. In the light of the need for further fact-finding and our decision on procedural

fairness, we have decided that the appeal should be remitted back to the First-tier to be heard de novo by any First-tier Tribunal judge except judges Agnew, Adio and Atreya. The respondent should use her best endeavours to be represented on the next occasion.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and we set it aside. The appeal will be remitted back to the First-tier Tribunal

Appellant's appeal allowed

We make no anonymity order as there is no public policy reason for so doing.

Signed this day of October 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge