



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal number: EA/07058/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard Remotely at Manchester CJC**

**Decision & Reasons Promulgated**

**On 21 July 2021**

**On 2 August 2021**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Ahtesham Khalil**

**(ANONYMITY ORDER NOT MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DECISION AND REASONS (V)**

For the appellant: No legal representation. Attendance by the Sponsor, Ms H Raja

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held

because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Pakistani national with date of birth given as 10.1.94, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 17.2.21 (Judge Williams), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 27.11.19, to refuse his application for an EEA Family Permit to join his Spanish national niece in the UK as an Extended Family Member (EFM), pursuant to Regulation 8 of the Immigration (EEA) Regulations 2016, as amended (the Regulations).
2. Permission to appeal was granted by the First-tier Tribunal on 26.4.21, the judge granting permission considering it arguable that Judge Williams had applied an unduly restrictive interpretation of dependency stating, "The judge may well have had in mind that he should only be satisfied that the appellant was dependent on the sponsor if he was exclusively reliant on him."
3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
4. The relevant background is that the appellant claimed to be financially dependent on the EEA sponsor, who has lived in the UK since July 2014. The appellant claims that not only has his sponsoring niece regularly sent money to him over a considerable period but that he is dependent on this money to meet his basic needs, thereby establishing the necessary relationship of dependency as defined in Regulation 8.
5. The application was refused for insufficient evidence of claimed money transfers from the sponsor in the UK to the appellant in Pakistan. The decision was upheld in the Entry Clearance Manager review of 11.5.20, which noted that no further documents had been submitted to address the concerns raised by the Entry Clearance Officer in the refusal decision.
6. At the appeal, the First-tier Tribunal Judge accepted at [38] that the documents relied on by the appellant demonstrated that the sponsor had made continuous and regular payments on an approximately monthly basis, from January 2019 to the date of the hearing. The judge also accepted the oral evidence that such payments began before January 2019. At [40], the judge concluded on the balance of probabilities "that the sponsor has been making regular payments to the appellant for a considerable period of time, with the payments having become formalised when the sponsor opened her own Ria account in approximately

2018. Proof of regular payments from January 2019 has been provided in this appeal.”

7. However, as the judge noted at [41] proof of financial remittances is not of itself proof that the appellant is dependent on the sponsor. At [42] the judge noted that there was little evidence of the appellant’s own financial circumstances, noting that only three paper receipts for purchases had been submitted. The judge also found that but for one problematic receipt, there was an absence of documentation to support the claim that the sponsor had paid the appellant’s educational fees. At [45] the judge noted that the appellant lived in a house owned by the sponsor’s father (the appellant’s brother-in-law) and he has no outgoings such as rent or bills. At [47] the judge found that there was a lack of evidence showing the appellant’s true financial situation. At [48], the judge concluded that there was “a lack of evidence presented of the appellant’s full income and outgoings. Without such evidence it is not possible to conclude that the appellant is dependent upon the remittances paid by the sponsor.” This conclusion was restated at [49] where the judge found “a deficiency of evidence presented upon which a positive finding of dependency can be made. I am not persuaded on the balance of probabilities that the appellant is dependent upon the sponsor.”
8. The Rule 24 reply, dated 13.5.21, maintains that the First-tier Tribunal Judge made the appropriate self-directions on the issue of dependency. “It is clear that on the appellant’s own evidence a substantial part of his essential needs, namely his accommodation, is in fact met by his father and ultimately the judge was not satisfied that the appellant had discharged the burden to show that he was dependent on the sponsor. The judge correctly applied the law and reached properly reasoned findings.” Actually, as explained above, the appellant lives in a house owned by the sponsor’s father, not his own father.
9. In submissions, Ms Raja, who appeared for the appellant at the First-tier Tribunal and who had competently drafted the grounds of appeal, submitted that she had been a credible witness and that the appellant’s personal circumstances in the village where he lived were such that he could not obtain receipts for his outgoings. There were three such receipts and the judge considered that more could have been obtained. However, I pointed out to Ms Raja that at [47] of the decision the judge was aware of her submission that receipts could not be produced and suggested in response that at the very least there ought to have been a breakdown of the appellant’s income and expenditure. As it is, there was neither a witness statement nor a letter from the appellant setting out his financial circumstances in clear detail.
10. On a careful reading of the decision, it does not appear to me that the First-tier Tribunal Judge considered that he/she could “only be satisfied that the appellant was dependent on the sponsor if he was exclusively reliant on him”, as suggested

by the judge granting permission. The judge accepted that payments were being made by the sponsor but noted the generous accommodation arrangements provided by the sponsor's father and, more significantly, the absence of documentation or other satisfactory evidence of the appellant's true financial circumstances. At [45], the judge was concerned that given the generous accommodation provided by the sponsor's father, the question was raised whether the appellant was in fact reliant on the sponsor's father and not the sponsor. The judge noted that there was no differentiation between the sponsor and her father's payments at various times to the appellant. The judge concluded by stating, "there are grounds to believe that the appellant is in fact reliant upon the sponsor's father rather than the sponsor." As I explained to Ms Raja at the hearing, both she and her father cannot be the sponsor's where the application was brought on the basis of she alone being the EEA sponsor.

11. I am satisfied that the findings and conclusions of the First-tier Tribunal were entirely open to the judge on the limited evidence put before the Tribunal. Whilst the judge accepted evidence of regular financial remittances despite the absence of documentary support, such remittances alone were insufficient to demonstrate dependency. The appellant had to demonstrate not only that he received the sponsor's financial support but also that he needed that material support in order to meet his essential or basic needs. It is evident that in preparing the application and the case for the appeal, the appellant and the sponsor failed to understand the key requirement to demonstrate the necessity of the financial remittances, which in turn begged the question of the appellant's true personal financial circumstances. The burden of proving this was on the appellant but the finding that he failed to discharge it was one open to the judge.
12. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

### **Decision**

The appeal of the appellant to the Upper Tribunal is dismissed

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 21 July 2021