



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: EA/06611/2019**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On the 9 March 2022**

**Decision & Reasons Promulgated  
On the 29 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SAJID ALI**

(Anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Mohammed of Kingston Solicitors

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** The appellant appeals with permission a decision the First-tier Tribunal Judge Nazir ('the Judge') promulgated on 12 March 2021 in which the Judge dismissed the appellant's appeal against the refusal by an Entry Clearance Officer (ECO) of his application for an EEA family permit. The date of refusal is 15 November 2019.
- 2.** The appellant sought to join his sponsor, Mr Nadeem Tahir Mohammad Begum, an EEA national, as an extended family member pursuant to regulation 8 of the Immigration (EEA) Regulations 2016.
- 3.** The operative part of the refusal notice reads:

- You state that your brother in law Nadeem Tahir Mohammad Begum is a Spanish national. You have provided evidence that your sponsor holds a Spanish passport. You have provided birth certificates for yourself and your sister confirming that you have the same parents, and your sister's marriage certificate confirming her relationship with your sponsor. I am satisfied that you are related as claimed. In accordance with the Regulation 8(2)(b) of the EEA Regulation 2016 (as amended) an extended family member application must demonstrate they were either:
  - o dependent on the EEA national in a country other than the UK.
  - o a member of the EEA nationals household in a country other than the UK.

In order for this department to establish your dependency we must be satisfied that you need the financial support from the EEA national to meet your essential needs.

- On your application you state that your sponsor has resided in the UK since 19 January 2019 and that you are financially dependent on him. As evidence of this you have provided money transfer remittance receipts for your sponsor to you, however, it is noted that these transfers are dated immediately prior to your application (7 Transfers within the last 9 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.
- It is also noted that you have not provided any evidence regarding your own financial situation. In the absence of this evidence this department cannot sufficiently establish your dependency, either wholly or partially, upon your EEA sponsor because we are unable to establish if you need the financial support from the EEA national to meet your essential needs.
- On that basis you do not meet the requirements of Regulation 8(2)(b) and your application is refused.
- Furthermore, Home Office records show that your sponsor has a wife and at least 4 dependent children. The submitted evidence shows that from this employment he earns a net income of approximately £823.97 per month. Due to his low income, I am not satisfied that it is sustainable to financially support you while meeting his own needs and the needs of any family members already reliant upon him.

I therefore refuse your EEA Family Permit application as I am not satisfied that you meet all the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.

- 4.** Following the appellant lodging his appeal the matter was reviewed by an Entry Clearance Manager (ECM) who on 25 January 2020 upheld the decision of the ECO for the following reasons:

I have reviewed the assertions as set out in the grounds of appeal. However, I note the appellant has failed to supply any further supporting evidence alongside the appeal papers to be considered in the course of this review.

Based on the evidence available, I am satisfied that the ECO has considered the application against the correct provision within the Immigration (European Economic Area) Regulations 2016 and I am satisfied that the ECO has applied the balance of probabilities in assessing the initial application.

In light of the above considerations and without further documentary evidence to consider, I maintain the ECO's initial decision to refuse entry clearance.

5. Having considered both the documentary and oral evidence provided the Judge sets out relevant findings of fact from [16] of the decision under appeal. The Judge found it uncontroversial that the Sponsor is an EEA citizen exercising treaty rights and that the appellant is related to him as claimed [16]. The Judge notes that it was agreed that the central and single issue in the appeal was that of dependency.
6. In addition to the documentary evidence the Judge also heard oral evidence from Mr Begum but was not satisfied that the appellant is dependent on him, as claimed, for the reasons set out between [19 - 23] of the decision under challenge in which the Judge writes:
  19. The case relies heavily on evidence of financial dependence. Mr Begum said in his evidence that the Appellant has been financially dependent for some nine or ten years. However, I have before me a total of eight money transfer slips dating from February 2019 to October 2019. This, in my judgement, is a relatively short period of time, in the context of a dependency that has lasted for more than nine years. I also note that the evidence relates only to a period of time immediately before the application is made, which indicates more that this was produced as evidence to support the application rather than evidence of long-standing and genuine dependency. I am confirmed in this view by the fact that the Appellant provides no evidence at all of continuing financial dependency. The most recent money transfer slip is dated for October 2019. This is 11 days before the application is made. Despite the passing of more than 16 months since then, there is no updated evidence before me of financial support since that date. In my judgement, had this been a case of dependency, the Appellant would have been able to provide evidence of financial dependency for a longer and more sustained period. The timing of the receipts provided leads me to the conclusion that these receipts served the purpose of supporting the application for a family permit, as opposed to demonstrating genuine dependency.
  20. I also note that the Appellant has provided very limited evidence of his circumstances in Pakistan. Whilst I note that dependency is a question of fact and not of necessity (*jia*) that dependency can be of choice, it is nevertheless appropriate to consider the circumstances of the Appellant in determining the question of whether or not a genuine dependency exists. Indeed, the 2016 regulations referred to an 'extensive examination' of the personal circumstances of an applicant.
  21. There is no evidence before me in relation to the Appellant's financial circumstances or otherwise in Pakistan, such as evidence of his finances, his outgoings and his expenses. I do not accept the evidence of Mr Begum that the Appellant is wholly reliant on him for financial support.
  22. I am therefore not satisfied based upon the evidence before me that the Appellant requires the material support of Mr Begum national, in order to meet his essential needs in the state of origin.
  23. Therefore, when considering the totality of the evidence before me, and in the round, I do not accept that the Appellant has shown to the necessary standard that he meets the requirements for a family permit. He does not, in my judgement, satisfy the definition of an extended family member in Regulation 8 of the Immigration (European Economic Area) Regulations 2016.

7. The appellant sought permission to appeal on two grounds. A limited grant of permission to appeal was made by another judge of the First-tier Tribunal on the basis it was said to be *“Arguable that the Tribunal erred in imposing a requirement that the Appellant be wholly dependent on the Sponsor for his essential needs rather than deciding if the essential needs of the Sponsor (sic) could be met without the financial support of the sponsor.* That judge found the remaining grounds are not arguable as they are “highly repetitive and lack clarity”.
8. The appellant renewed his application for permission to appeal directly to the Upper Tribunal, which was considered by Upper Tribunal Judge Mandalia who, in a decision of 26 July 2021, refused to grant permission to appeal on the remaining grounds for the following reasons:
  2. Permission to appeal was granted by First-tier Tribunal Judge Ford on one ground only. She considered it arguable that the Tribunal erred in imposing a requirement that the appellant be wholly dependent on the sponsor for his essential needs rather than deciding if the essential needs of the sponsor. First-tier Tribunal Judge Ford stated, *“The remaining grounds are not arguable. They are highly repetitive and lack clarity.”*
  3. The appellant has renewed the application for permission to the Upper Tribunal in respect of the grounds upon which permission was refused and relies upon the matters set out in the grounds of appeal dated 21 June 2021. At paragraph [14] of the grounds, the appellant *“raises two grounds in relation to the decision of IJ Nazir”*, but then summarises three grounds. Permission has already been granted in relation to the test applied when Judge Nazir was considering whether the appellant is dependent upon the EEA national.
  4. The appellant claims the judge erred in fact and law and his understanding of the issues that were before the Tribunal and determined that the appellant and the sponsor engaged in conduct that was tantamount to an abuse of rights, when no such allegation was made by the respondent. The ground is unarguable. Judge Nazir properly noted at paragraph [16] that the central and single issue in the appeal was that of dependency. Contrary to what is said in the grounds of appeal, on the evidence before the Tribunal, it was open to Judge Nazir to reach the conclusion that the evidence of money transfers served a purpose of supporting the application for a family permit, as opposed to demonstrating genuine dependency.
  5. The appellant also claims Judge Nazir erred in fact in his understanding of the evidence and unlawfully and/or unreasonably made adverse findings which were not open to him. That ground too is unarguable. The judge was required to consider the evidence as a whole and he plainly did so. However disguised, as the Court of Appeal said at para [18] of *Herrera v SSHD* [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The findings reached by Judge Nazir were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusion that were wholly unsupported by the evidence. The implication in the grounds of appeal is that the evidence was considered by the judge, but not to the extent or in the way desired by the author of the grounds.
  6. It will be for the Upper Tribunal to consider when the appeal is heard whether any findings made by Judge Nazir are infected by any error in the judge’s consideration of the test for the dependency.

9. Before the Upper Tribunal Mr Mohammed, who represented the appellant below, argued that the issues were so interlinked that it was not possible to approach the matter in a way in which he felt constrained by the refusal of permission. After further discussion it was agreed that the paragraphs of the grounds of appeal which he could rely upon are those set out at [26 – 36] of the grounds seeking permission to appeal which are in the following terms:

**The Judge erred in fact and law in his understanding of the legal definition of dependency. Consequently, the erred in fact and law in his application of the evidence to the legal definition of dependency.**

26. With respect, there are a number of errors in the Judge’s reasoning which need to be addressed. They will be dealt with in turn.

The legal definition of dependency

27. The leading authority on the issue of ‘dependency’ within the context of the EEA Regulations is Jia Migrationsverket Case C-1/05. Paragraphs 35 and 36 of that decision:

*“35. According to the case law of the Court, the status of ‘dependent’ family member is the result of a factual situation characterised by the fact that material support for that family member is provided by the Community national who has exercised his right to free movement by his spouse...*

*36. ... According to the Court, there is no need to determine the reason for recalls to that support himself by taking up paid employment. That interpretation is dictated in particular by the principle according to which the provisions establish the free movement of workers, which constitute one of the foundations of the Community and must be construed broadly (Lebon, paragraph 22 and 23)”.*

28. The Judge fails to undertake an assessment of the following issues:
- If there is a factual situation characterised by the fact that material support for Appellant is provided by the sponsor, if so,
  - disregard any reasons for the records, and
  - interpret the provisions broadly.
29. As discussed above, the Judge errs in his understanding of the position of the parties, the agreed evidence between the parties, the evidence in the round and the legal test that applies.
30. The Respondent does not (and did not) challenge the following:
- That the money transfer slips evidence genuine transfers of money from the Sponsor to the Appellant.
  - That the Respondent’s own policy only lists bank statements\_or\_money transfers between EEA national and extended family members whilst the extended family member is outside the UK is acceptable proof of dependency.
  - That the Appellant resides in the Sponsor’s house in Pakistan.
  - That the Appellant was a member of the Sponsor’s household for many years before the Sponsor, and some years later his immediate family, came to the UK.

- That the refusal notice incorrectly describes the money transfers is commencing immediately before the application was submitted. The money transfers predate the application by 9 months.
- That the Appellant does not have a bank account and thus cannot provide any further evidence of his financial circumstances in Pakistan.

(\*Much of the above was documented in correspondence from the Appellant's legal representative to the Tribunal and the Respondent dated 20 November 2020, over 3 months before the appeal was heard. It was referred to during the hearing).

31. It will be noted that the Judge's findings concerning abuse of rights/circumventing the 2016 Regulations does not even arise as an issue between the parties. The parties agree that the money transfer slips genuinely show money passing from the Sponsor to the Appellant.
32. The Judge should have considered the (sic) if there is a factual situation characterised by the fact that material support for Appellant is provided by the Sponsor. In doing so he should have had regard for the evidence that was agreed and/or unchallenged and allotted appropriate weight to such evidence.
33. The Judge should have realised that the money transfer slips predated the application by over 9 months. The Respondent's refusal notice stating that the money transfer slips commenced immediately prior to the date of application was irrational. The Judge should have realised that the Respondent conceded the point.
34. The Judge was left with the sole issue of sufficiency of evidence. The Judge should have had regard to the Respondent's policy indicating that either bank statements or money transfer slips *must* be provided. Money transfer slips have been provided. It was uncontested that the Appellant lives in the Sponsor's house in Pakistan. Accordingly, the Sponsor must be providing the Appellant with accommodation, and more likely than not, money to meet his ascension needs. The Respondent is no evidence in rebuttal.
35. As to his financial circumstances. However, given that it was not disputed that he does not have a bank account or that he lives in the Sponsor's house in Pakistan, those concerns fall away.
36. The Judge erred in fact and law in failing to i) apply the law concerning dependency, and ii) undertake an assessment of dependency in accordance with the law having regard to the evidence between the parties and the policy of the Respondent.

## **Error of law**

- 10.** It is a settled principle that if a representative refers to a source in support of their case that they set out in full the relevant provisions of that source. The appellant's representative at [27] of the grounds seeking permission to appeal purports to set out the relevant parts of [35 and 36] of the decision in *Jia*, making selective quotes from those paragraphs to create the impression that all an individual needed to do to establish dependency is to demonstrate a factual situation characterised by the fact that material support to that family member is provided by the Community national.
- 11.** In *Jia Migrationsverket Case C -1/05* and LU 15.2.07 the European Court considered "dependence" under Article 1(1)(d) of Directive 73/148/EEC and said this was to be interpreted to the effect that

“dependent on them” meant that members of the family of an EU national established in another member state within the meaning of Article 43 of the EC Treaty, needed the material support of that EU national, or his or her spouse, in order to meet their essential needs in the state of origin of those family members or the state from which they had come at the time when they applied to join the EU national. The Court said that Article 6(b) of the Directive was to be interpreted as meaning that proof of the need for material support might be adduced by any appropriate means, while a mere undertaking by the EU national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family member’s situation of real dependence.

- 12.** In *Bigia & Others* [2009] EWCA Civ 79 at paragraph 24 Maurice Kay LJ said that where the question of whether someone is a “family member” depends on a test of dependency, that test is as per paragraph 43 of the ECJ’s judgement in *Jia*. In essence members of the family of a Union citizen needed the material support of that Union citizen or his or her spouse in order to meet their essential needs.
- 13.** This requires an individual to prove that not only are they receiving support from the EEA national but that such support is required to meet their essential needs i.e. without such support those needs could not be met.
- 14.** It was not disputed by the Judge that some payments had been made by the sponsor to the appellant, as acknowledged in the refusal notice. The Judges comments upon such are set out at [19] of the decision which is referred to in full above. The Judge clearly took the money transfer receipts into account, sets out the dates appearing on those receipts, and noted that there were only eight in total. Although Mr Mohammed repeated before the Upper Tribunal his point that the ECO had made a mistake as to the passage of time by which such payments were made, this is not a challenge to the decision of the ECO, and he was unable to show that the Judges finding regarding the limited number of the receipts was inaccurate. In this appeal it was claimed that the appellant had been dependant upon the sponsor for 9 or 10 years. The Judge was not satisfied that this limited evidence supporting that claim.
- 15.** In *Reyes v Migrationsverket* (Case C-423/12) CJEU (Fourth Chamber), 16 January 2014 it was held that the fact that a Union citizen regularly and for a significant period paid a sum of money to the descendant necessary in order to support her in the country of origin was (on the facts of that case) enough to prove that the descendant was in a real situation of dependence. A Member State could not require the descendant to establish that she had tried without success to find work or obtain subsistence support from the authorities of the country of origin or otherwise support herself.
- 16.** The Judge did not make any adverse finding suggesting legal error in relation to a dependency of choice situation but was clearly not

satisfied that the evidence proved the appellant was in a real situation of dependency.

17. Mr Mohammed argued that the Judge had erred in law in expecting or requiring more evidence to be provided than that which was relied upon before the Tribunal but in Rahman [2012] CJEU Case-83/11 it was said that a Member State may, in the exercise of its discretion, impose particular requirements relating to the nature and duration of dependence in the context of Extended Family Member' (EFM) providing this does not deprive the Directive of its effectiveness. The purpose of such requirements are essentially to prevent EFM's from obtaining entry and/or residence based upon a dependency of convenience, whereby the dependency is contrived for the sole purpose of appearing to meet the definition of an EFM.
18. The evidence in this appeal gave rise to concerns that the payments that have been made, which reflected a minimum period Mr Mohammed suggested in his submissions was all that was required to establish dependency, and which satisfied the point that he claims arose in a policy document, was a manufactured situation rather than demonstrating real dependency sufficient to satisfy the requirements.
19. In relation to the "policy" referred to by Mr Mohammed, I have not seen any document that satisfies the definition of a policy document although there is a publication in the public domain headed "Free Movement Rights: extended family members of EEA nationals Version 7.0 This guidance applies and interprets the Immigration (European Economic Area) Regulations 2016. These regulations make sure the UK complies with its duties under the Free Movement of Persons Directive 2004/38/EC, dated 27<sup>th</sup> of March 2019". This is not policy but guidance to caseworkers dealing with such applications.
20. In relation to evidence of dependency in the instructions it is written:

Evidence of dependency

Proof of dependency may include periods of financial dependency that:

- existed before the applicant came to the UK
- continues now the applicant lives in the UK Evidence of this dependency can include:
  - bank statements
  - money transfers

Evidence of membership of household

Evidence of this may include:

- joint tenancy agreements
- a letter from the local council
- utility bills
- joint bank or building society statements
- official correspondence addressed to them at the household

21. The submission made that the evidence provided *must* include bank statements or money transfers does not reflect the precise wording of the guidance. There is no restriction placed upon the type of evidence that can be provided to establish the factual claim being made. It can include bank statements or money transfers but neither are



mandatory documents and the guidance to caseworkers does not show that if such documents are provided that satisfies the required test without more.

- 22.** The Judge notes in the decision that it was agreed in preliminary discussions that the sole issue in the appeal was that of dependency. The assertion by Mr Mohammed that the appeal should have succeeded on the basis of 'membership of the EEA national's household' is therefore disingenuous when he was the advocate before the Judge and appears to have agreed at that stage that this second string of the appeal was not being pursued. There was, in any event, insufficient evidence to establish an entitlement on this ground.
- 23.** The Judge clearly considered the evidence with the required degree of anxious scrutiny and the suggestion the Judge should be given greater weight than he did to aspects of that evidence is an unwarranted challenge when the weight to be given to the evidence was a matter for the Judge. It has not been established that the weight given was in any way irrational or contrary to the evidence.
- 24.** Whilst the grounds of appeal suggest alternative findings the Judge could have made which the appellant would have preferred, as does the author of the grounds, that does not establish those factual findings actually made by the Judge are outside the range of those reasonably available to him.
- 25.** The Judge having had the benefit of not only the documentary but also the oral evidence of the sponsor was not satisfied that the appellant had proved his case.
- 26.** In coming to the conclusion that the appellant had not discharged the burden upon him to the required standard the Judge specifically refers to the fact the appellant provided very little evidence of his circumstances in Pakistan, which meant that even if payments had been received there was nothing before the Judge to show that without those payments the appellant was unable to meet his essential needs. Mr Mohammed's submission that there was such evidence, which appeared upon examination to be a reference to generic statements made by the appellant in his witness statement that he uses the money for food accommodation and other matters, was clearly not sufficient in the eyes of the Judge. That is not an irrational finding when those generic statements were not backed up by any further evidence. Mr Mohammed's submission that in such cases no such evidence would ordinarily be obtained is incorrect as the Tribunal has seen a number of cases in which extended family members have provided detailed evidence showing why the support of the EEA national is required to meet their essential needs in relation to both what that money is spent on and confirmation of their family position. This is not a case of the Judge expecting the appellant to prove a negative, such as the fact he may not have a bank account, but of asking the appellant to establish and prove what he is claiming as fact.
- 27.** The core finding of the Judge at [22] that he was not satisfied based on the evidence that the appellant requires the material support of the UK-based sponsor in order to meet his essential needs in Pakistan is a finding arrived at applying the weight the Judge felt able to apply to

the evidence, applying the correct legal test, and is one supported by adequate reasoning.

**28.** There was also no evidence before the Judge showing that Mr Begum exercising treaty rights is in any way conditional or dependent upon the appellant's presence in the UK.

**29.** The ECO also refused the application for a family permit by reference to regulation 12 of the 2016 Regulations which states:

(4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—

(a) the relevant EEA national satisfies the condition in paragraph (1)(a);

(b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and

(c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

**30.** The United Kingdom, under the 2016 Regulations, was not obliged to issue a family permit to an extended family member in the same manner in which they were obliged to do so to a family member. The ECO in exercise of the discretionary power to grant a family permit to an EFM refers to evidence indicating that the UK-based sponsor who, although he works, does not have a substantial income and who has a wife and four dependent children to support, had not established it was sustainable for him to support the appellant in the UK whilst meeting his own needs and the needs of those dependant upon him. It did therefore not appear to the ECO appropriate in all the circumstances to issue the EEA family permit indicating that, even if it was found on the evidence that the appellant had established the required element of dependency, and in light of the lack of any evidence showing that the exercise of discretion by the ECO was in any way unlawful or irrational, that the appeal is likely to have failed in any event. It does not appear there was any challenge to the exercise of the discretion in this was by the ECO.

**31.** It is my finding on the basis of the content of the determination, examination of the submissions and evidence provided, that the appellant has failed to establish any material error in the decision of the Judge to dismiss the appeal on any basis. Whilst the appellant does not like the decision and suggests other findings, he would rather the Judge had made to enable him to succeed, that is not the required test. The Court of Appeal have made it clear that appellate judges must not interfere with a decision unless a genuine legal error material to the decision under challenge has been made out. In this appeal no such has been established.

## **Decision**

**32. I dismiss the appeal.**

Anonymity.

**33.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 16 March 2022