Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/04839/2019 (V)**

THE IMMIGRATION ACTS

Heard at: Field House **Decision & Reasons Promulgated**
On : 1 February 2021 **On 15 February 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

QAISER NAWAZ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Simak, instructed by Shah Law Chambers
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a Pakistan national born on 15 December 1982. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EEA Family Permit under the Immigration (European Economic Area) Regulations 2016 to enter the UK as the

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dependant direct family member (son) of an EEA national exercising treaty rights in the UK.

3. The appellant applied on 24 June 2019 to join his father, a Spanish national, in the UK. In his application, it was stated on behalf of the appellant that he was a widower with four children from his marriage, of whom he was the primary carer. He would be leaving his children in the care of a family member in Pakistan. His father, the sponsor, worked as a chef in a restaurant in the UK, earning over £1200 a month and had been issued with a UK Registration Certificate confirming his status as an EU national exercising treaty rights. He was supporting the appellant and sending him funds for his maintenance, to pay his bills, for his children's education and for his food and utilities. The appellant was therefore dependent upon him.

4. The appellant's application was refused on 10 August 2019 on the basis of a lack of satisfactory evidence of dependency upon the sponsor. The respondent did not accept that the appellant was a family member of an EEA national in accordance with regulation 7 of the EEA Regulations.

5. The appellant appealed the decision and produced further documents.

6. In response, the Entry Clearance Manager upheld the decision noting that the sponsor's monthly earnings of £1083.16 a month appeared to be insufficient to maintain a household, to lease a property and support an additional family member; that there were a number of unexplained deposits in the sponsor's bank statements, the largest of which was £2000 deposited on 17 May 2019; the fact that the appellant was leaving his children in the care of another family member in Pakistan suggested that he had support available to him in that country and that it was therefore not clear why he would leave his children without their father to care for them; and that the sponsor had been sending money back to Pakistan but not all the amounts had been sent to the appellant directly and there were only limited payments made in 2017 and 2015.

7. The appellant's appeal was heard by First-tier Tribunal Judge Ross on 4 March 2020 and was dismissed in a decision promulgated on 20 April 2020. The judge heard from the EEA sponsor, the appellant's father, and recorded his evidence that he sent money to Pakistan every month, sometimes £250 and other times £300 a month which the appellant used for his every day living expenses; that the appellant's wife died two years ago and he lived together with his children with his mother and that he worked as a farmer. The sponsor had left Pakistan in 1982 the year that the appellant was born and went to work in Saudi Arabia and then for ten years in Spain. He had another son and two daughters and his son, who was 17 years of age, lived with him in the UK and was at college. The family owned the land which the appellant farmed and the appellant sold surplus produce which brought an income of around 15,000 PKR a month. The sponsor said that the appellant used the money he sent him to pay for his children's school fees. The £2000 deposit in his bank account was an amount he had borrowed from a friend to pay for some building work on his home in Pakistan. The appellant wanted to come to the UK to work, so that he

could send money home to his family. It was submitted on behalf of the appellant that two thirds of the amount sent by the sponsor to Pakistan each month was for the appellant.

8. The judge accepted that there was documentary evidence of money transfers from the sponsor to Pakistan, noting that they were to different names and were varying amounts. He considered that it was clear from the evidence that the appellant had his own income in Pakistan from his farming enterprise. Whilst he accepted that the sponsor contributed to the appellant's household income which helped him pay for his children's school fees, he did not accept that the appellant was dependent on the amounts transferred by his father and considered there to be a scarcity of evidence of dependency. The judge also endorsed the ECM's conclusions, noting that the sponsor had to accommodate and support his youngest son and pay rent and bills from his £1083.16 a month income and that he had unexplained deposits in his account and needed to borrow from friends. The judge did not, therefore, accept that this was a genuine case of an EEA dependent relative having to move to the UK because of a dependency on an EEA sponsor, but considered that the purpose of the appellant wanting to come to the UK was to work and support his children by sending money back to Pakistan. The judge did not accept that the appellant was dependent upon the sponsor and concluded that he could not satisfy the conditions in regulation 7 as a direct dependant of the sponsor. The judge accordingly dismissed the appeal.

9. Permission was sought by the appellant to appeal to the Upper Tribunal on the following grounds: that the judge's approach to the issue of his income from a 'farming enterprise' was erroneous as he disregarded the sponsor's evidence that it was simply a small plot of land around the house on which he grew vegetables and speculated about the steps he could take to increase his income, contrary to the guidance in Reyes (EEA Regs: dependency) [2013] UKUT 314 and Moneke (EEA – OFMs – assessment of evidence) Nigeria [2011] UKUT 00430; that the judge relied upon an irrelevant criterion in assessing the appeal, namely the reasons for the dependency and the steps he could take to reduce the dependency; that the judge was wrong to impose financial requirements on the sponsor and erred by making adverse findings based upon the £2000 he had borrowed; and that the judge erred by questioning the reasons for him seeking to relocate to the UK.

10. Permission was refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal on renewed grounds, with particular reference to the first ground although not excluding the other grounds.

Hearing and Submissions

11. The matter then came before me for a remote hearing by way of skype for business and both parties made submissions on the error of law issue.

12. Ms Simak relied upon her skeleton argument and expanded upon it. She submitted that the judge had erred by failing to apply the correct test for financial dependency and by imposing additional criteria which did not form part of the requirements under the EEA Regulations. With regard to the first ground, she submitted that the judge had

misunderstood the appellant's evidence about the plot of land from which he derived a small income, as it was not a farming enterprise which could have produced a larger income but was a small area of land around his house. As for the second ground, the judge improperly introduced into the test a consideration of the reasons for the dependency, and unlawfully engaged in speculation as to the steps the appellant could take to reduce the dependency, contrary to the guidance in Reyes (Judgment of the Court) [2014] EUECJ C-423/12 and Moneke and others (EEA - OFMs) Nigeria [2011] UKUT 341. It was clear from SM (India) v Entry Clearance Officer (Mumbai) [2009] EWCA Civ 1426 that provided the judge did not find the evidence to be absent or unreliable, he should accept the oral evidence of dependency. As for the third ground, the judge had erred by imposing additional financial criteria, including the sponsor's ability to sponsor the appellant, in light of a deposit of £2000 into his account which was a loan from a friend. There was evidence of money transfers from the sponsor to the appellant over a five year period and that was sufficient to demonstrate the dependency. With regard to the fourth ground, the judge had erred by questioning the appellant's reasons for relocating to the UK, which was an irrelevant consideration under the EEA Regulations.

13. Mr McVeety submitted that whether or not the judge introduced irrelevant considerations, none of that was material because the appellant had not demonstrated dependency upon the sponsor, in the terms set out in Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383, namely to meet his essential needs. The evidence was that the sponsor simply contributed towards the appellant's income and the unchallenged oral evidence was that the money from the sponsor was for the appellant's children's school fees. Therefore the money was for the children and not for the appellant and that was the end of the matter. The judge therefore made no material errors of law.

14. In response, Ms Simak submitted that the appellant had not said that the money was only for his children, but was for his household. The evidence was that 70% of the money sent to Pakistan by the sponsor went to the appellant, and only part of that was for his children's schooling. If the money was not sent there would be insufficient funds for clothing and food. It was therefore wrong to say that the appellant did not benefit personally. Ms Simak reiterated her previous submission, that the judge had erred by introducing four additional criteria which did not form part of the EEA Regulations. If the four additional criteria were taken away the appeal would have to be allowed on the evidence and on the findings made.

Discussion

15. Whilst it may be that the judge had regard to matters which, when taken in isolation, were not specific requirements of the EEA Regulations, I am in agreement with the point made by Judge Adio, in refusing permission in the First-tier Tribunal, that it was relevant to look at the wider picture and the concerns expressed by the judge as to the paucity of evidence of dependency. That was also the point effectively being made by Mr McVeety when he submitted that the appellant had simply not demonstrated dependency in the first place, in the terms set out in Lim. At [32] in Lim the Court of Appeal said:

> "In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs."

16. It is of note that, whilst the representations and submissions made on behalf of the appellant refer to the sponsor's money being relied upon to pay the appellant's bills, his children's education, food and utilities, neither the sponsor's statement nor that of the appellant provided any such specific details. As Mr McVeety said in his submissions, the sponsor's oral evidence before the judge was that the money he sent was in fact spent on school fees for the children. There was no evidence of the school fees or the nature of the schooling, to show that the money was essential in order for them to have an education and neither was there any evidence of the appellant's financial circumstances to show that the money from his father was essential for his own living needs. Indeed it is relevant to note that there was no mention at all in the statement and evidence in the appeal bundles of the appellant's employment status or income and it was only at the hearing itself that the sponsor provided some oral evidence in that regard, referring to his son's income from farming.

17. It is argued on behalf of the appellant that the judge erred by focussing on the existence of a "farming enterprise" in Pakistan rather than the question of dependency on the sponsor and that the judge elevated what was simply a plot of land where the appellant grew vegetables to a larger scale entity from which he received an income. However there is nothing in the judge's decision to support the suggestion that he inflated or distorted the evidence. The judge was required to consider the evidence of the appellant's income and financial circumstances in order to ascertain the relevant matter of dependency and it is clear that there was a notable absence of such evidence, as he observed at [9]. The judge was simply relying on the evidence of the sponsor that his son was a farmer who made an income from selling surplus produce on the land he owned and farmed and he recorded the sponsor's evidence as to the level of that income at [6], noting the paucity of further relevant evidence. He was not required to accept the claim of dependency, simply because it was made, but was entitled to require further evidence to support the appellant's case and to conclude that, in the absence of relevant supporting evidence the claim had not been made out.

18. In the circumstances, and contrary to the assertions made in the grounds and by Ms Simak, it seems to me that there was nothing inconsistent with the guidance in Reyes, SM (India) and Moneke in the judge's conclusion, that the overall picture provided by the evidence was not one which satisfactorily supported the claim of dependency. Accordingly, whilst the judge's decision could have been expressed in better terms, I do not find any material errors of law requiring the decision to be set aside. On the limited evidence before the judge , the conclusion that he reached was one which was fully and properly open to him.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: *S Kebede*
Upper Tribunal Judge Kebede Dated: 1 February 2021