



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

**Appeal Number: UI-2022-002750
UI-2022-002751
UI-2022-002752
UI-2022-002753**

On appeal from EA/05528/2021
EA/05568/2021
EA/05571/2021
EA/05573/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 26 September 2022**

**Decision & Reason Promulgated
On 14 November 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**RANA MUHAMMAD YAR
RANA MUHAMMAD UMAIR
MUHAMMAD ZUBAIR
MUHAMMAD SARIA
[NO ANONYMITY ORDER]**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Mr Glen Hodgetts of Counsel, appearing by Direct Access

For the respondent: Ms Susana Cunha, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission from the decision of the First-tier Tribunal dismissing their appeal against the respondent's decision on 11 December 2020 to refuse them an EEA family permit allowing them to enter the UK as the family member or extended family members of the sponsor, a Romanian citizen married to the principal appellant's brother.
2. The appellants are citizens of Pakistan, all male. The principal appellant is the father of the other three appellants and of the sponsor's husband. The second, third and fourth appellants are brothers of the sponsor's husband. They are all adults, the youngest of the sons being 25 years old.
3. **Mode of hearing.** The hearing today took place face to face.

Background

4. The principal appellant is a widower, fully retired from his previous employment as a public servant, when he worked as an accountant for the Government of the Punjab. He retired in 2014.
5. The principal appellant has a pension, but he lost his government accommodation on retirement and the family returned to their ancestral village home, where the second and third appellants care for their father, who is now said to be very unwell and needing 24-hour care. The fourth appellant studied in Islamabad and has achieved a BSc in Nanoscience and Nanoscience Technology. He still lives in Islamabad, despite having completed his studies.
6. The principal appellant's account is that all three of his sons are financially dependent upon him, while he was only able to support them because he himself was financially dependent upon his son and daughter-in-law in the UK.
7. The claims of these appellants rely on their connection to the principal appellant's brother's wife, a Romanian citizen who is present with her husband in the UK. The respondent considered that Regulation 6 of the Immigration (European Economic Area) Regulations 2016 was not met, as the evidence before her did not establish that the sponsor was in genuine employment or otherwise exercising Treaty rights in the UK, which was a requirement for the appellants to show that they were extended family members of such a person (see Regulation 8 of the 2016 Regulations).
8. The respondent was also not satisfied by the evidence of dependency by these appellants on the principal appellant's brother and his EEA national wife.
9. The appellants appealed to the First-tier Tribunal.

First-tier Tribunal decision

10. The First-tier Tribunal held a hybrid hearing. The principal appellant's brother gave evidence through an Urdu interpreter. He adopted his witness statement and was not cross-examined. The sponsor, his Romanian wife, did not provide a statement or give evidence. There was no witness statement from any of the appellants.
11. The First-tier Judge noted that the principal appellant (the father of the other appellants) was said now to require full time care. The second appellant left school at year 10; the third appellant had a Bachelor's degree, but both of them remained living with the principal appellant to support him. The fourth appellant had studied successfully and left home.
12. All three brothers were said to be unemployed, with no source of income but what their brother sends from his income and that of the sponsor. No evidence to support that was provided, save the sponsor's husband's witness statement which stood unchallenged in cross-examination. There was evidence of approximately 124 money transfers over 11 years, and the sponsor's husband stated that he left cash with his family when he visited Pakistan.
13. There was no detailed evidence concerning the expenditure or financial commitments of the appellants in Pakistan, so that it was unclear how much of that was discharged by the payments sent from the UK by the sponsor and her husband, and how much by the principal appellant's pension or other sources of income. There was evidence of the level of the principal appellant's pension at Pakistani Rupees 35,000 per month (about £138 today).
14. The decision concluded thus:

“33. It would have been helpful if the appellants had provided witness statements which explained the basis upon which they have been conducting their lives. It is relevant that at the date of hearing, the second appellant is 30 years of age, the third appellant is 27 years of age, and the fourth appellant 25 years of age. There is nothing known of the lives of the appellants, other than the fourth appellant who, I accept, has achieved what appears to be a very good BSc degree which I am confident will enable him to secure employment. No explanation has been given as to why he has remained in Islamabad, which is where he gained his degree qualification.

34. All of the above leads me to conclude that the appellants have not provided me with a true or accurate picture of their personal and financial circumstances, and that they have presented a case which suggests that, simply because the sponsor has been sending them funds, they could not subsist without those funds. In the absence of evidence of their personal circumstances, and how they are conducting their lives, I find that the funds which have been sent by the sponsor have not been established as meeting any of the appellants' essential

needs and as a consequence I find that the requirements of Regulations 7 and 8 cannot be met. Given my conclusions, I find that the applications [sic] cannot meet the requirements of Regulation 12 and on that basis I am obliged to dismiss these appeals. ”

15. The appellants appealed to the Upper Tribunal.

Grounds of appeal

16. The grounds of appeal may be summarised as follows:

- (1) That it was an error of law to require documentary evidence of expenditure and liabilities;
- (2) That the First-tier Judge failed to make clear findings of fact on the sponsor’s evidence and credibility (it appears that the author means the sponsor’s husband, in context). On that basis, the appellants argue that the findings on dependency of essential needs is vitiated;
- (3) That the First-tier Judge failed to take into account relevant evidence, in this case the oral evidence of the sponsor’s husband, there being no credibility finding about that evidence and no reason to doubt his credibility;
- (4) That the sponsor’s husband gave a clear explanation for the lack of documentary evidence, that is to say, that the family’s expenditure was mostly in cash so there were no bank statements to support the expenditure incurred;
- (5) That was not open to the judge to find that the family must have assets of value, having moved to their ancestral family home when the principal appellant retired, thus losing the government accommodation which he had while working as a government accountant, and that in any event, the value of the village property was irrelevant since the family could not sell it because the father and two of the sons were living there;
- (6) That dependency was a factual question and the reasons immaterial, and that it was an error of law to have regard to the employability of the son who lived in Islamabad, or why he had chosen not to work; and lastly
- (7) That an irrelevant factor was ignored, in relation to the total remittances received and the length of time they had been sent. On reading paragraph 5.7, I think Counsel must have meant to say that a relevant, not an irrelevant factor, had been ignored. This ground makes calculations and purports to give evidence which was not given to the First-tier Tribunal.

Permission to appeal

17. Permission to appeal was granted by First-tier Judge Boyes in the following rather terse terms:

- “1. The application is in time.
2. The grounds assert that the judge erred in a catalogue of ways in respect of the applications and appeals.
3. I have considered the grounds and the judgment, permission is granted on all matters raised. They are clearly arguable as errors of law which is the test they need meet at this stage.”

Rule 24 Reply

18. There was no Rule 24 Reply on behalf of the respondent.

19. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

20. In submissions for the appellant, Mr Hodgetts relied on the unreported decision of Upper Tribunal Judge Grubb in *Boah v Entry Clearance Officer Liverpool* [2022] EA/01247/2020, promulgated on 9 March 2022. The evidence of the sponsor’s husband was that the appellants had the father’s monthly pension of Pakistani Rupees 35000 (about £138 at today’s rate) to support a family of four, and no other source of income save what he and the sponsor sent them. The sponsor’s evidence alone was sufficient for the First-tier Judge to have found dependency.

21. The reasons given by the First-tier Judge for finding that the evidence of dependency was insufficient were inadequate at the level of an error of law. The First-tier Judge had accepted that the fourth appellant, who lives in Islamabad, was unemployed. Speculation about what employment he could obtain in the future was a proleptic assessment and a plain error of law, as was the finding that the family could sell their village home and raise funds on which to live.

22. For the respondent, Ms Cunha relied on *TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40 (04 February 2009) as indicating that a negative credibility finding could properly be made where evidence which should have been available was not advanced: see the First-tier Judge’s decision at [29]-[33].

23. Ms Cunha argued that the appellants’ appeal was a mere disagreement and should be dismissed.

The Reyes/ Lim guidance on dependence

24. In *Reyes v Migrationsverket (Judgment of the Court)* [2014] EUECJ C-423/12 (16 January 2014) the Court of Justice of the European Union held that more than mere payment is required to establish dependence. There

must be evidence of a need for material support, and evidence of regular payments over a long period is relevant, and that the reason for dependence is not. :

“22. In order to determine the existence of such dependence, the host Member State must assess whether, having regard to his financial and social conditions, the direct descendant who is 21 years old or older, of a Union citizen, is not in a position to support himself. The need for material support must exist in the State of origin of that descendant or the State whence he came at the time when he applies to join that citizen (see, to that effect, *Jia* paragraph 37). ...

25. In those circumstances, that descendant cannot be required, in addition, to establish that he has tried without success to find work or obtain subsistence support from the authorities of his country of origin and/or otherwise tried to support himself.”

25. In *Lim v Entry Clearance Officer (Manila)* [2015] EWCA Civ 138, Lord Justice Elias (with whom Lord Justices McCombe and Ryder agreed) summarised the effect of *Lim* at [32]:

“25. In my judgment, [*Reyes*] makes it unambiguously clear that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. There are numerous references in these paragraphs which are only consistent with a notion that the family member must need this support from his or her relatives in order to meet his or her basic needs. For example, paragraph 20 refers to the existence of "a situation of real dependence" which must be established; paragraph 22 is even more striking and refers to the need for material support in the state of origin of the descendant "who is not in a position to support himself"; and paragraph 24 requires that financial support must be "necessary" for the putative dependant to support himself in the state of origin. It is also pertinent to note that in paragraph 22, in the context of considering the Citizens Directive, the court specifically approved the test adopted in *Jia* at paragraph 37, namely that:

‘The need for material support must exist in the State of origin of those relatives or the State whence they came at the time when they apply to join the Community national.’ ...

32. 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. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. ...”

26. In *Boah*, Judge Grubb summarised the decisions in *Reyes* and *Lim*, before finding that the decision of the First-tier Judge was unsustainable on the facts. It is unsurprising that his decision is unreported, given that it turned on its particular factual analysis. I do not consider that there is any point in *Boah* which does not emerge directly from *Reyes* and *Lim*.

TK (Burundi)

27. The relevant passage in *TK (Burundi)* is at [20]-[21]:

“20. The importance of the evidence that emerged in this Court is to demonstrate how important it is in cases of this kind for independent supporting evidence to be provided where it would ordinarily be available; that where there is no credible explanation for the failure to produce that supporting evidence it can be a very strong pointer that the account being given is not credible. ...

21. The circumstances of this case in my view demonstrate that independent supporting evidence which is available from persons *subject to this jurisdiction* be provided wherever possible and the need for an Immigration Judge to adopt a cautious approach to the evidence of an appellant *where independent supporting evidence, as it was in this case, is readily available within this jurisdiction, but not provided*. It follows that where a Judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be supporting evidence and there is no credible account for its absence commits no error of law when he relies on that fact for rejecting the account of an appellant.”

[*Emphasis added*]

Analysis

28. The appellants in this appeal provided no evidence about their financial circumstances and their essential living expenses. The Tribunal was faced simply with an assertion on their behalf by the sponsor’s husband that the principal appellant’s pension of about £138 a month was not sufficient to support them all. The factual matrix here was not as helpful to the appellants as that in *Lim* or *Boah* where there was at least some evidence over and above an assertion in a witness statement. The decision in *TK (Burundi)* relates to evidence available within the jurisdiction and does not assist the Secretary of State.
29. The question of dependency is a finding of fact for First-tier Tribunal. An appellate Tribunal may only interfere in very limited circumstances with a finding of fact by the First-tier Judge who saw and heard the parties give their evidence: see *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed. The factors there identified are: irrationality, *Wednesbury* unreasonableness, a finding wholly unsupported by the evidence, or a decision where the judge failed to identify and record the matters critical to his decision on

material issues, on material issues, in such a way that the reviewing Tribunal was unable to understand why he reached that decision.

30. None of those applies here. Whilst it is right that the judge may have impermissibly speculated about the family's property assets and how and why the fourth appellant is managing to live apart from his father and brothers in Islamabad, the fundamental reasoning is sound. The appellants' financial circumstances are unknown. They have not made the slightest attempt to indicate why the money they receive from the sponsor and her husband in the UK is necessary for their basic needs. It was open to the First-tier Judge to find that he was not satisfied that he had been given a credible or truthful account of their circumstances, and to find that the appellants had not demonstrated dependency.
31. These appeals are dismissed.

DECISION

32. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 5 October 2022