



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004310
First-tier Tribunal No: EA/05791/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Shoukat Hussain
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home
Department

Respondent

Representation:

For the Appellant: Mr R Ahmed (Direct Access)

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 17 May 2023

DECISION AND REASONS

1. The appellant, a national of Pakistan born on 15 May 1977, appeals against a decision of Judge of the First-tier Tribunal Chohan (hereafter the “judge”) promulgated on 29 June 2022 following a hearing on 15 June 2022 by which the judge dismissed his appeal against the respondent's decision of 21 December 2020 to refuse his application of 26 November 2020 under the EU Settlement Scheme for a family permit in order to join his brother, Mr Aziz Ur Rehman (the “sponsor”), an Italian national exercising Treaty rights in the United Kingdom.
2. The judge accepted that the appellant was related as claimed to the sponsor. He found that the appellant had not established that he was dependent upon the sponsor for his essential needs.
3. At the hearing, Mr Tufan accepted that the judge erred in law as follows:
 - (i) In the final sentence of para 12 of his decision, it appears that the judge understood that the appellant had to show that he was living in accommodation provided by the sponsor from 2008, whereas the appellant only needed to show that he was dependent upon the sponsor for his essential needs as at the date of his application. Mr Tufan therefore accepted that the judge had erred in law in requiring dependency to be shown from 2008 as opposed to as at the date of application (26 November 2020).
 - (ii) In reaching his finding that there was a “*significant lack of evidence in respect of the personal and financial circumstances of the appellant*” (para 14), the judge failed to take into account the evidence given by the appellant in his witness statement as to his outgoings and the

average of the remittances he received from the sponsor as well as the supporting evidence in the appellant's bundle.

- (iii) Finally, the judge erred in taking into account an irrelevant matter, i.e. the fact that the appellant was not in employment but his brother was.
4. I entirely agree. I am satisfied, for the reasons given by Mr Tufan, that the judge erred in law and that the errors were material. He misdirected himself in law, for the reasons given in para 3(i) above, at least in relation to accommodation. He overlooked relevant evidence, for the reasons given in para 3(ii) above. He took into account an irrelevant matter as described at para 3(iii) above. I am satisfied that these errors were material to the outcome.
 5. I therefore set aside the judge's decision.
 6. I informed Mr Tufan that I was minded to proceed to re-make the decision on the appeal and allow the appeal. He informed me that he did not wish to persuade me otherwise.
 7. I proceed to re-make the decision on the appellant's appeal.
 8. The judge did not make any adverse comments on the credibility of the sponsor or the reliability of any of the documentation provided. Indeed, I infer from the judge's decision that he found the sponsor credible and the documents before him (that he had considered) to be reliable. Mr Tufan informed me that he did not wish to persuade me otherwise.
 9. Contrary to para 14 of the judge's decision, the appellant had provided in his witness statement significant detail not only about the remittances he had received from the sponsor including a calculation as to the average amount of the remittances received but also a detailed explanation of his outgoings. In support of the evidence he gave in his witness statement of his outgoings, he provided evidence (at AB/116-152) in the form of various documents, including a tenancy agreement, a gas bill, copies of invoices for school fees and grocery receipts.
 10. On the whole of the evidence that was before the judge and given that the judge did not make any adverse assessment of the credibility of the sponsor or the reliability of any of the supporting documentary evidence, I am satisfied on the balance of probabilities that the appellant has established that he was dependent upon the sponsor for his essential needs as at the date of his application.
 11. The appellant has therefore established that he is an extended family member under regulation 8 of the 2016 EEA Regulations.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error of law sufficient to require it to be set aside. The decision of the First-tier Tribunal to dismiss the appellant's appeal is set aside.

I re-make the decision on the appellant's appeal by allowing his appeal against the respondent's decision.

Signed
Upper Tribunal Judge Gill

Date: 17 May 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email