



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002624
UI-2022-002627
UI-2022-002636
UI-2022-002637
UI-2022-006651
First-tier Tribunal No:
EA/52024/2021
EA/52027/2021
EA/52030/2021
EA/53988/2021
EA/52028/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 15 April 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**(1) Mrs Kalsoom Zahra
(2) Mr Suleman Abbas
(3) Mr Saqib Abbas
(4) Miss Adan Zahra
(5) Miss Haram Fatima
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr R Ahmed, instructed by Fawad Law Associates
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 7 December 2023

DECISION AND REASONS

INTRODUCTION

1. The appellants are all nationals of Pakistan. The first appellant is the mother of the second, third, fourth and fifth appellants. On 23rd December 2020 they applied for an EEA Family Permit as extended family members of Mr Ahtazaz Boota Bibi (“the sponsor”), a Spanish national exercising treaty rights in the UK. The sponsor is the brother of the first appellant and uncle of the other appellants. The applications were considered under the Immigration (European Economic Area) Regulations 2016 and refused by the respondent for reasons set out in decisions dated 9th June 2021.
2. The appellants’ appeal against that decision was dismissed by First-tier Tribunal Judge Blackwell for reasons set out in his decision promulgated on 14th March 2022. The appellants were granted permission to appeal to the Upper Tribunal. The decision of Judge Blackwell was set aside by me sitting with Deputy Upper Tribunal Judge Chamberlain for reasons set out in our decision dated 1 May 2023. We directed that the decision will be remade in the Upper Tribunal. It is against that background that the appeal was listed for further hearing before me.

THE ISSUE

3. The appellants had applied for an EEA family permit to join their EEA sponsor as the extended family members of an EEA national. The issue in this appeal is whether the appellants are dependent upon the EEA national.

THE LEGAL FRAMEWORK

4. The burden rests upon the appellants to establish their entitlement to an EEA family Permit on a balance of probabilities.
5. In summary, Regulation 8 of the Immigration (European Economic Area) Regulations 2016 requires the appellants to first establish that they are the relatives of an EEA national. Provided, as here, the relationship is established, there are two separate routes to qualification. The appellants must demonstrate they are either: (i) dependent on the EEA national in a country other than the UK, or (ii) a member of the EEA national’s household in a country other than the UK. Although ‘dependence’ and ‘membership of the EEA national’s household’ are alternative routes, there is often likely to be some overlap in the evidence.
6. As was set out in the ‘error of law’ decision, the entitlement to an EEA family permit only accrues if the appellants are ‘dependent’ on the union citizen. In Reyes v Migrationsverket (C-423/12), albeit in the context of a ‘Family member’, the CJEU confirmed that dependency is a question of fact and the dependency must be genuine, but if it is found that the family members essential needs are met by the material support of an EEA national, there is no need to enquire as to the reasons for the dependency and there is no reason to show emotional dependency.

7. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs. Whether the appellants are dependent on the sponsor is therefore a factual question for me to assess on the evidence before the Tribunal.

THE EVIDENCE AND SUBMISSIONS

8. The appellants rely upon the evidence set out in a bundle comprising of 242 pages that was previously before the FtT. They rely upon a further bundle comprising of 27 pages prepared in readiness for the hearing of the appeal before me. At my request, Mr Ahmed has also provided me with a schedule identifying the sums sent by the sponsor to the first appellant between 30 June 2020 and 2 November 2023. In reaching my decision I have had careful regard to all the evidence before me, whether it is expressly referred to in this decision or not.
9. The sponsor attended the hearing and gave evidence with the assistance of an Urdu interpreter.
10. Mr Ahtazaz Bibi ("Mr Bibi") adopted his witness statement dated 17 November 2021 and confirmed the content of that witness statement is true and correct. He confirms he is a Spanish national who arrived in the United Kingdom in January 2018. He confirms the first appellant's husband, Mr Ghulam Abbas passed away on 27 May 2020. The appellants were wholly dependent upon Mr Abbas, and since his death they are dependent upon Mr Bibi. He confirms that he regularly sends money to the first appellant for their essential needs.
11. In cross-examination, Mr Bibi said he could not recall exactly how much he sends to his sister, and the sum varies depending on the expenses she incurs including school fees and costs of medicine. He said that his sister tells him on the phone what she needs, and because she has been unwell he calls her every couple of days. She lives in rented accommodation, which was arranged by him in June 2020. Mr Bibi said that his sister and her children were unable to continue living where they had previously lived because it was too expensive. That too, had been rented accommodation.
12. Mr Bibi confirmed there are nine siblings. Besides the first appellant he has seven other siblings. Shabaz Ahmed (elder brother) and Sehrish Noreen (younger sister) live in Spain. Sajad Amhed (brother) lives in the UK. Nibah Kauser (sister), Munazah Akhtar (sister), Mafiah Noreen (sister), and Moseen Ali (brother) all live in Pakistan. Mr Bibi said that he is the only one who provides the appellants with any support. He claimed the other siblings are unable to do so because they have children of their own.

When it was put to him that he too has children of his own, he said that although he too has children, he has the fewest.

13. Mr Bibi said that the first appellant does not have a bank account and money is sent to her using 'Moneygram' or 'Remitly'. He claimed the first appellant does not have a bank account because in Pakistan, a commission is charged even to withdraw money. He claimed that 'Moneygram' or 'Remitly' do not charge a fee for an online transaction and the exchange rate provided is better. Mr Bibi said his sister meets all her costs by payments in cash. He confirmed the second to fifth appellants all remain in education. The eldest has now finished college and is about to start university. Mr Bibi initially said he does not know what his eldest nephew is studying but when pressed said he thinks he is studying something to do with computers at Gujarat University. As that is a government university only an admission fee is payable.
14. In answer to questions from me by way of clarification, Mr Bibi said that his siblings are aware of the application that has been made by the appellants and of this appeal. He confirmed that none of his siblings have provided a witness statement. He went on to say; *"they do say that if the children were to come here it would be beneficial for them because the children can get educated"*. He said that his siblings had not provided witness statements because it was him that had supported the application and if he had been told, he would have obtained statements from them. Mr Bibi said the first appellant had told him that the university fee for the eldest child would be between 40,000 and 50,000 Pakistani rupees and he forwarded a payment to her in August 2023. The youngest of the children is still in college. Mr Bibi said that if he stopped sending money the appellant would be unable to survive. The first appellant is not in good health and suffers from diabetes. Mr Bibi confirmed the 'Income and Expenses Statements' at pages 145 to 153 of the appellant's bundle were prepared by the appellants' representatives. He said the first appellant had provided the receipts and the solicitors had prepared the statement based upon the documents provided. He explained that the balance brought forward each month arose because he would sometimes send extra money to the first appellant and she would keep any money that she had left over, at home. Finally, Mr Bibi explained that in Pakistan utility bills are addressed to the owner of the property and when a utility bill requires payment, the cash is paid to the property owner so that the utility bill can be paid.
15. I heard submissions from the parties representatives that are set out in the record of proceedings and it serves no purpose for me to burden this decision with a recitation. In summary, Ms Arif submits the evidence of the first appellant and sponsor does not properly identify what the appellants' essential living needs are, and the appellants have failed to establish that any sums that are received by the first appellant from Mr Ahtazaz Bibi are required to meet their essential living needs. Ms Arif submits I should attach little weight to the documentary evidence before me including the rental agreement relied upon. She submits the simple transfer of money, without more evidence regarding the appellants' domestic circumstances in Pakistan, is insufficient.

16. Mr Ahmed invites me to find the sponsor is a credible witness and that he has taken responsibility for supporting his sister and his nieces and nephews since the death of his brother-in-law. He submits that in a cash-economy such as that which operates in rural Pakistan, it is not unusual that the first appellant would not have a bank account and would have to rely upon support from her brother in the way claimed. He submits there is a wealth of evidence before the Tribunal of money transfers and receipt's for expenditure. He submits that looking at the evidence as a whole, the appellants have established that they rely upon the financial support provided by the sponsor to meet their essential living needs.

DECISION

17. In reaching my decision I have been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible. I have considered the claims made by the appellants and their story as a whole, against other familiar factors, such as consistency with what has been said before, and the documents relied upon.
18. The appellants claim they became dependent upon their sponsor following the death of the first appellant's husband. The appellant's bundle has a copy of the death certificate of Mr Ghulam Abbas, which confirms his death was as a result of 'natural' causes and that he died on 27 May 2020. That is consistent with the oral evidence of the sponsor, who confirmed that his brother-in-law passed away on 27 May 2020 having suffered a heart attack. I accept, on balance, that the copy of the death certificate relied upon is genuine and that the first appellant's husband and father of the second to fifth appellant's passed away on 27 May 2020.
19. There is no witness statement from the first appellant setting out her domestic circumstances in Pakistan and explaining the income enjoyed by the family, their previous living arrangements, how the family met their living costs before the first appellant's husband passed away, what their essential living costs are, and how they are met. The family will have previously incurred costs such as school fees, but there is no explanation in the evidence before me as to how those costs were met and paid.
20. I have a letter that is said to be from the 'Registration Clerk' of the 'Field Office, 10 Bhattike Council, Wazirabad'. The letter is undated and makes the broad assertion that the first appellant *"is totally dependent upon the financial support from her real brother Mr Ahtazaz Ahsan... and she has no other source of income except her brother"*. I have no explanation as to the information provided to the author of the letter. There is no information as to the basis upon which the author of that letter knows that the appellant is only supported by the sponsor. I find that it is a letter that has been provided at the request of the first appellant and/or sponsor to support the claim and that the author of the letter has no personal knowledge of the appellants' financial circumstances. I attach very little weight to the letter.

21. I have been provided with a document titled 'Document Rental' ("tenancy agreement") that refers to the first appellant renting a house from Mr Muneer Hussain for the sum of 8000 Pakistani Rupees ("PKR") per month for a period of five years between 15 June 2020 to 15 June 2025. The tenancy agreement refers to an advance payment (refundable) of 16,000 PKR. The agreement requires the first appellant to pay the rent, in cash, from '01 to 05 of each month'. The document also states; *"All fares including all bills for water, gas and electricity are included in this fare"*. The document is vague as to whether the 16,000 PKR is some form of payment of rent in advance, or a deposit. There are no receipts for the cash payments said to be made to the landlord, Mr Muneer Hussain. That is surprising because the appellant has been able to provide receipts for other large cash expenditure. Although surprising, the absence of receipts from the landlord is not in any way determinative.
22. More importantly, the first remittance sent by the sponsor to the first appellant was in the sum of 50,400 PKR (£247.06) on 30 June 2020. There is no explanation as to how the first appellant was able to make the advance payment of 16,000 PKR required under the tenancy agreement on or about 15 June 2020.
23. Furthermore, at page 145 of the appellant's bundle, I have an 'income and expenses statement' prepared by the appellant's representatives for June 2020. That statement, which is not evidence, but a document prepared by the appellant's representatives, no doubt on instructions, confirms the first appellant received 50,400 Rupees from the sponsor in June 2020. In that statement there is reference to payment of rent for the month of June in the sum of 8000 Rupees. Importantly, there is no reference to the payment of 16,000 PKR that was due. It is also not clear what rent would have been due in June 2020 since the rental runs for a period of five years from 15 June 2020. If the rent is due between the 1st and 5th of each month, the payment of rent for the month of June would have covered the period 15 June 2020 to the beginning of July 2020 and so the rent due would have decreased *pro rata*.
24. The reliability of the 'income and expenses statements' relied upon are therefore called into question. Any error in the statements prepared, has been carried forward into all the subsequent statements relied upon because if the first statement is inaccurate, the balance carried forward each month is also wrong. The statements also refer to "Total Cash Received" each month, but that is not a true reflection of the cash received from the sponsor during that month. It is in fact a combination of the cash sent by the sponsor and the balance carried forward from the previous month. I acknowledge that some of the 'expenses' set out in the statements are supported by 'receipts' for the purchase of food, medicine, clothing, and school fees, but I do not accept the 'income and expenses statements' prepared by the appellant's representatives provide an accurate running account and represent a true reflection of the income of the first appellant and the use to which money sent by the sponsor to her, is put.

25. I have had the opportunity of hearing the appellants' sponsor, Mr Ahtazaz Bibi give evidence, and seeing that evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the evidence is received through an interpreter. I acknowledge that there may be a danger of misinterpretation, but I was satisfied that the witnesses understood the questions asked, and the interpreter had a proper opportunity to translate the answers provided by Mr Bibi. It is now well established that if a court or Tribunal concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie about some aspects of the claim for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. A person's motives may be different as respects different questions. I have borne that in mind in reaching my decision.
26. I did not find Mr Bibi to be a credible witness. His witness statement dated 17 November 2021 is brief and provides very little information regarding the appellants' circumstances. He claims the first appellant's husband was a 'labourer (daily wage)' and the first appellant was a housewife dependent on her husband. He makes the broad claim that since June 2020 he has been sending money to the appellants for their essential needs. His evidence before me was vague and internally inconsistent. In cross-examination, he claimed that he arranged the accommodation in which the appellant's now live, because their previous accommodation was too expensive. In his evidence before me he said that in Pakistan utility bills are addressed to the owner of the property and when a utility bill requires payment, the cash is paid to the property owner, so that the utility bill can be paid. First, that is inconsistent with the tenancy agreement which confirms the utility bills are included in the rent. Second, it appears to form no part of the appellants' case that they use any of the money sent to them to make any payment to the landlord for utility bills as and when they fall due. There is no reference to expenditure for water, electric, gas etc. in the statements of income and expenditure that have been prepared.
27. Despite his claim to be the one that has taken responsibility for the appellants' essential living needs, he had very little knowledge of the appellants' domestic circumstances and needs. For example, despite being responsible for the costs of educating the children, he was unable to say what the eldest child intends to study at University. When pressed, he simply claimed it was "something to do with computers". Mr Bibi claimed that the first appellant had told him the university fee for the eldest child would be between 40,000 PKR and 50,000 PKR and that he forwarded a payment to the first appellant to meet that expenditure in August 2023. There is evidence of a payment of 76,754 PKR having been sent to the first appellant by the sponsor on 30 August 2023 via 'Remitly', but no evidence of payment of any Admission fee to the 'Gujerat University'.
28. Mr Bibi also claimed that the first appellant's other siblings were not prepared to assist her 'because they have children of their own'. When pressed, he said that although he too has children, he has fewer children.

Mr Bibi claims that none of his siblings have provided evidence because he was not told that statements should be obtained. That is not a credible explanation. The appellants have been represented throughout and the first appellant has gone to the trouble of obtaining a letter from the 'Registration Clerk' of the 'Field Office, 10 Bhattike Council, Wazirabad'. It was in my judgement telling that when Mr Bibi was being asked about the lack of supporting evidence from his other siblings he went on to say that *"they do say that if the children were to come here it would be beneficial for them because the children can get educated"*. That I find, is the real reason behind the applications made and the applications have been disguised with remittances sent to the first appellant and receipts to support expenditure.

29. The simple fact that money has been sent to the appellants is not on its own enough. As is now clear from the authorities, it is not enough simply to show that some financial support is in fact provided by the EU citizen. The family member(s) must need the support in order to meet their basic needs, or put another way, their essential living costs. In the appellants bundle, there are receipts provided for expenses such as the monthly purchase of groceries, medicines, clothing, shoes, and for payment of school fees. I have considered the extent to which that evidence supports the claim that the appellants rely upon the sponsor to meet their essential living needs. Quite apart from what I have already said about the payment of 16,000 PKR due to the landlord under the terms of the tenancy agreement in June 2020, I note that the first appellant incurred the costs of groceries in the sum of 13,500 PKR on 10 June 2020 (*AB page 154*), medicines in the sum of 1345 PKR on 1 June 2020 (*AB page 161*), school fees of 2,560 PKR on 11 June 2020 (*AB page 176*), and tuition fees of 1,200 PKR on 8 June 2020 (*AB page 180*). All of those expenses were incurred and paid for before the first remittance made by the sponsor to the first appellant on 30 June 2020. The first appellant therefore clearly had resources to which she could turn following the death of her husband. There is no evidence to explain how that expenditure was met. I accept there is a wealth of evidence before me of monthly expenditure for similar expenses in the months and years that have followed, but I find that evidence has been prepared and put together to give the appearance that the appellants rely upon the sponsor for their essential living needs.
30. Standing back and looking at all the evidence before me in the round, I find that I have not been provided with an honest and accurate account of the appellants' circumstances in Pakistan and the support required or provided. I do not accept that the sponsor is credible and honest in his evidence before me about the family dynamics and the reasons for the money transfers. I do not accept the claim made that the sponsor is the only person that provides financial and other support to the appellants. On balance I find, I have not been told the truth about the support provided to the appellants from other members of the family.
31. I accept the appellants derive some benefit from the money sent by the sponsor to the first appellant. It is not unusual for members of a family to send money to their family abroad, sometimes at regular intervals. That

can be for a variety of reasons, including, as the appellants claim here, to meet their essential living needs. Monies can however also be sent to make the lives of other family members abroad a little more comfortable, or in some cases to give the impression of dependency.

32. I accept the appellants do not need to be solely financially dependent on their EEA Sponsor and even if the appellants were paying for some of their living costs from other sources, that does not mean the appellants are not receiving financial support for their essential needs. However, even taking a holistic view of the evidence before me, there is a lack of credible evidence to establish that it is the EEA Sponsor who is responsible for the essential living expenses of the appellants.
33. I find it is more likely than not, that Mr Ahtazaz Bibi has sent money to the first appellant. However, on the evidence before me, the appellants have failed to establish that the money sent is in fact used by them for their basic needs. There is very little evidence of the emotional needs of the appellants or as to their circumstances in Pakistan. The focus of the evidence before me is squarely upon the money sent to the appellants by the sponsor, and not upon any other support that the appellants require or are provided with in the wider sense. Considering the evidence as a whole I find that the appellants have not established, on the balance of probabilities, that they are dependent extended family members of the EEA Sponsor as defined in Regulation 8 of the 2016 EEA Regulations.
34. It follows that I dismiss the appeal.

NOTICE OF DECISION

35. The appellants' appeals against the respondent's decisions to refuse their application for an EEA Family Permit are dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024