THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 707JR]

BETWEEN

SHEHARYAR RAHIM SUBHAN

AND

ASIF ALI

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 25th July 2018

Introduction

1. This is the judicial review of a decision by the Minister for Justice and Equality ('the Minister'), dated 15 August 2016 ('the decision'), under Regulation 21(4) of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and 2008 ('the 2006 Regulations'), since revoked, to uphold on review a first instance decision of 21 December 2015, under Reg. 7(2) of the 2006 Regulations, to refuse the application of Asif Ali, a national of Pakistan, for a residence card as a permitted family member of his cousin Sheharyar Rahim Subhan, a British - and, hence, European Union – citizen, exercising free movement rights in the State.

2. The 2006 Regulations were made, in exercise of the powers conferred on the Minister by s. 3 of the European Communities Act 1972, to give effect to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Citizens' Rights Directive').

3. In substance, the reason the Minister gave for the decision is that Mr Ali failed to establish that he is a 'permitted family member' of Mr Subhan, within the meaning of that term under Regulation 2(1) of the 2006 Regulations (transposing the requirements of Article 3(2) of the Citizens' Rights Directive concerning 'other family members'), because he failed to establish that in the United Kingdom (as the country from which he had come), he was either: (a) a dependant of Mr Subhan, as a Union citizen; or (b) a member of the household of Mr Subhan, as a Union citizen.

Procedural history and grounds of challenge

4. The application is based on a statement of grounds dated 8 September 2016, supported by an affidavit of Mr Subhan and a two-paragraph verifying affidavit of Mr Ali, each sworn on that date.

5. By order made on 12 September 2016, Barr J granted the applicants leave to seek the reliefs identified, on the grounds specified, in their statement of grounds. Principal among those reliefs is an order quashing the Minister's decision.

6. The applicants impugn that decision on the following five grounds. First, the Minister erred in law in construing the term 'dependant of the Union citizen' under the 2006 Regulations. Second, the decision that Mr Ali had failed to establish that he was a dependant of Mr Subhan was unreasonable or disproportionate on the evidence presented. Third, the decision was unreasonable because the Minister failed to have regard to the evidence presented. Fourth, the decision did not address Mr Ali's claim that he was a member of Mr Subhan's household in the United Kingdom. And fifth, the Minister erred in law in interpreting and applying the term 'member of the household of the Union citizen' under the 2006 Regulations, wrongly construing it as membership of a household headed by the Union citizen, rather than membership of the same household as the Union citizen.

7. The Minister delivered a statement of opposition dated 24 July 2017. It is supported by an affidavit, sworn on 10 August 2017 by Garrett Byrne, a principal officer of the EU Treaty Rights Review Unit in the Department of Justice and Equality ('the Department').

Background

8. For the purpose of the present proceedings, the following facts are not in dispute.

9. Mr Subhan was born in Pakistan on 4 May 1978 and moved to the United Kingdom with his parents in 1997. He was naturalised as a British citizen on 8 February 2013. He moved to Ireland in January 2015 where, since October 2015, he has been self-employed as an importer and retailer of mobile phone accessories, working first from his rented home and, later, from a rented self-storage unit. On 27 February 2016, Mr Subhan married a woman who is a Pakistani citizen and who, at the time of the hearing of these proceedings, continued to reside in Peshawar, Pakistan.

10. Mr Ali was born in Pakistan on 1 April 1986. He is a Pakistani citizen and is the first cousin of Mr Subhan. They were brought up in the same family compound in Peshawar, Pakistan (at least, until Mr Subhan's departure for the UK in 1997). While still resident in Pakistan, Mr Ali obtained a third-level degree in economics.

11. In 2010, at 24 years of age, Mr Ali travelled to the United Kingdom on a four-year student visa. He pursued courses in accountancy and, later, business administration. It is not clear what qualifications, if any, he attained as a result. As a student, Mr Ali lived in the house that his cousin Mr Subhan shared with his parents and siblings. That house is owned by Mr Subhan's brother. For reasons that are not evident on the papers before me, Mr Subhan and Mr Ali entered into a tenancy agreement with Mr Subhan's brother in respect of their occupation of that house on 11 February 2014.

12. Mr Ali's permission to remain in the UK as a student expired on 28 December 2014.

13. In January 2015, Mr Subhan moved to Ireland to seek employment in the exercise of his European Union free movement rights.

14. On 4 March 2015, Mr Ali applied to the UK authorities for further leave to remain there. He asserts that he did so to enable him to apply to various UK universities for admission in the Autumn of 2015 to pursue further studies.

15. On 5 March 2015, Mr Ali unlawfully entered the State from the United Kingdom without a visa by travelling through Northern Ireland and went to reside with Mr Subhan.

16. On 24 June 2015, the Minister received an application from Mr Ali for an EU residence card as a "permitted family member" of Mr Subhan. While I have not had sight of the relevant application form, it seems the application was made on the basis that Mr Ali was both a dependant and member of the household of Mr Subhan in the country from which he had come, namely the United Kingdom. The applicants have exhibited much of the material that Mr Ali placed before the Minister in support of that application, though not all of it.

17. In August 2015, Mr Ali was granted permission to reside in the State for 6 months, pending the determination of his application for a residence card.

18. On 21 December 2015, an official of the Minister wrote to Mr Ali, notifying him of the Minister's decision to refuse his residence card application under the 2006 Regulations. The reasons given for that first instance decision were, in material part, the following:

> 'You have failed to submit satisfactory evidence that you are a family member of an EU citizen in accordance with Regulation 2(1) of the Regulations.
>
> You claim to be a member of the household of the EU citizen and submitted a number of documents showing that you and the EU citizen shared a mutual address in the United Kingdom between July 2010 and January 2015, when the EU citizen travelled to Ireland. It is noted that you did not join the EU citizen in this State until March 2015, despite your permission to remain in the United Kingdom expiring in December 2014 and the reasons for this have not been explained.
>
> It is further noted that the EU citizen did not obtain UK citizenship until 08/02/2013, therefore the time that you claim to have been residing as a member of the EU citizen's household is less than two years. It is further noted that the EU citizen's father, brother and sister also shared the same address as you and [the] EU citizen in the UK.
>
> You also claim that you are dependent on the EU citizen and submitted a number of bank statements and money transfers as evidence of this. However, these documents in isolation are not proof of dependency. You failed to provide complete information detailing your source of finances between the time the EU citizen transferred funds to you in 2009 and 2010 up to November 2014, when you submit that the EU citizen made a number of lodgments into your bank account. In the absence of a full account of your source of finances during the period of time you were residing in the UK, it is not accepted that you have demonstrated that you are dependent on the EU citizen.
>
> Furthermore, while you have submitted documents which show that you shared a mutual address with the EU citizen in the UK for a number of years, this is not sufficient to demonstrate that you are a member of the household of the EU citizen under the Regulations and Directive.'

19. Through their solicitors, the applicants sought a review of that decision by letter dated 19 January 2016. Further representations were made and further documents submitted. At the conclusion of that process, by letter dated 15 August 2016, Mr Byrne wrote to Mr Ali on the Minister's behalf, stating in material part:

> 'I am to inform you that the review of your application has not been successful, as you do not fulfil the relevant conditions set out in the Regulations and the Directive. The decision to refuse your application dated 24/06/2015 is affirmed for the following reasons.
>
> You have failed to submit satisfactory evidence that you are a family member of an EU citizen in accordance with Regulation 2(1) of the [2006 Regulations].
>
> It is submitted that the EU citizen having resided in the United Kingdom for 17 years and became a British citizen on 08/02/2013 travelled to this State to take up employment for a few months, subsequently became self employed since October 2015 and thereby exercised his EU Treaty Rights in the State. The evidence indicates that you the applicant pursued a course of study for a number of years in the United Kingdom and resided with the EU citizen. It is submitted that you entered the State illegally through Belfast [Northern Ireland] and are now dependent on the EU citizen who it is submitted is your cousin and that you are a member of the household of the EU citizen in this State.
>
> The Minister has examined the supporting documentation submitted in support of your application for residence in the State under EU Treaty Rights. I am to inform you the Minister is satisfied that you have not established that you are in fact dependent [on] the EU citizen Sheharyar Rahim Subhan. In respect of your residence in the United Kingdom you have provided evidence that you resided at the same address as the EU citizen Mr Subhan, however, you have not established that the EU citizen was in fact the head of that household in the United Kingdom.'

20. In the affidavit that he swore on 10 August 2017, Mr Byrne seeks to clarify that the last sentence just quoted was intended to convey that Mr Ali had failed to establish that the household in the UK of which he was a member was that of Mr Subhan, as the Union citizen concerned, as opposed to a household in the UK of which both Mr Ali and Mr Subhan were members at the material time.

The law

21. Article 1 of the Citizens' Rights Directive lays down, amongst other things, the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members. Article 2 of the Citizens' Rights Directive defines both a 'Union citizen' and the 'family member' of a Union citizen for the purposes of the exercise of those rights. Under Article 2(2), a 'family member' is defined as: (a) the spouse; (b) registered partner (in certain defined circumstances); (c) direct descendant under the age of 21 or a dependant of the Union citizen, spouse or partner (so defined); and (d) dependent direct relative in the ascending line of the Union citizen, spouse or partner (so defined). As Article 3(1) of the Citizens' Rights Directive confirms, these are the persons who are the designated beneficiaries of the rights the exercise of which it conditions.

22. Article 3(2) states:

'Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.'

23. Article 10 provides, in material part:

'1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

…

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen…;

…'

24. As has frequently been noted, Recital 6 in the preamble to the Citizens' Rights Directive states:

'In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under the Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.'

25. At the material time, the Citizens Rights Directive was transposed in Ireland by the 2006 Regulations.

26. Under the heading 'Interpretation', Regulation 2 provides that:

'"family member" includes a qualifying family member and permitted family member;

…

"permitted family member", in relation to a Union citizen, means any family member, irrespective of his or her nationality, who is not a qualifying family member of the Union citizen, and who, in his or her country of origin, habitual residence or previous residence-

(a) is a dependant of the Union citizen,

(b) is a member of the household of the Union citizen,

(c) on the basis of serious health grounds strictly requires the person care of the Union citizen, or

(d) is the partner with whom the Union citizen has a durable relationship, duly attested;

"qualifying family member", in relation to a Union citizen, means-

(a) the Union citizen's spouse,

(b) a direct descendant of the Union citizen who is –

(i) under the age of 21, or

(ii) a dependant of the Union citizen,

(c) a direct descendant of the spouse of the Union citizens who is-

(i) under the age of 21, or

(ii) a dependant of the spouse of the Union citizen,

(d) a dependent direct relative of the Union citizen in the ascending line, or

(e) a dependent direct relative of the spouse of the Union citizen in the ascending line

…'

27. Regulation 5 states (in material part):

'(1) A person who wishes to enter the State on the basis that he or she is a permitted family member of a Union citizen may be required to produce to the Minister-

(a) (i) where the person is a Union citizen, a valid passport or national identity card, or
(ii) where the person is not a national of a Member State, a valid passport,
(b) documentary evidence from the relevant authority in the country of origin or country from which he or she is arriving certifying that he or she is a dependent, or a member of the household, of the Union citizen, ...

(2) Upon receipt of the evidence referred to in paragraph (1), the Minister shall cause to be carried out an extensive examination of the personal circumstances of the person concerned in order to establish whether he or she is a permitted family member.

(3) A permitted family member, who is a member of a class of non-nationals not specified in an order made under section 17 of the Immigration Act 2004 as not requiring an Irish visa, shall be in possession of a valid Irish visa as a condition to being granted permission to enter the State.

...'

28. Under Regulation 6(1), a third country national family member is permitted to reside in the State for up to 3 months on condition that he or she holds a valid passport and does not become a burden on the social welfare system of the State. Under Regulation 6(3), such a person may reside in the State for a period longer than 3 months if the Union citizen concerned meets the necessary criteria for such residence under Regulation 6(2).

29. Regulation 7 states:

'(1) (a) A family member of a Union citizen who is not a national of a Member State and who has been resident in the State for not less than 3 months shall apply to the Minister for a residence card.

(b) An application made under subparagraph (a) shall contain the particulars set out in Schedule 2 and be accompanied by such documentary evidence as may be necessary to support the application.

(c) The Minister shall immediately cause to be issued a notice acknowledging receipt of an application made under subparagraph (a).

(2) Where the Minister is satisfied that it is appropriate to do so, he or she shall, within 6 months of the date of receiving an application made under paragraph 1(a), cause to be issued a residence card containing the particulars set out in Schedule 3 in respect of the family member concerned.

(3) Subject to Regulation 20, a person the subject of an application made under paragraph (1)(a) may remain in the State pending a decision on the application.'

30. Regulation 21 states:

'(1) A person to whom these Regulations apply may seek a review of any decision concerning the person's entitlement to be allowed to enter or reside in the State.

(2) A request for review under paragraph (1) shall contain the particulars set out in Schedule 11.

(3) A review under this Regulation of a decision under paragraph (1) shall be carried out by an officer of the Minister who-

(a) is not the person who made the decision,

and

(b) is of a grade senior to the grade of the person who made the decision.

(4) The officer determining the review may –

(a) confirm the decision the subject of the review on the same or other grounds having regard to the information provided for the review or substitute his or her decision for the decision the subject of the review, or

(b) set aside the decision and substitute his or her determination for the decision.'

The legal issues raised

31. The applicants submit that the case presents two primary legal issues. First, did the Minister err in law in her interpretation of the term 'member of the household of the Union citizen having the primary right of residence' in concluding that Mr Ali had failed to establish that he had been a member of the household of Mr Subhan in the United Kingdom? Second, did the Minister err in law in her interpretation of the term 'dependant of the Union citizen having the primary right of residence' in concluding that Mr Ali had failed to establish that he had been a dependant of Mr Subhan in the United Kingdom?

The meaning of 'member of the household of the Union citizen having the primary right of residence'
32. *Wang & Ors v Minister for Justice and Equality* [2012] IEHC 311, (Unreported, High Court (Cooke J), 23rd July, 2012) was a case about an application for leave to seek judicial review of a number of related decisions of the Minister, one of which was that the Chinese national mother of a Hungarian – and, hence, European Union – citizen infant daughter was neither a qualified family member nor a permitted family member of her daughter under the 2006 Regulations because the mother was not, and had never been, a dependant of the daughter and because 'a minor cannot constitute the basis of a household for the purpose of the [Citizens' Rights] Directive.' The challenged decision in that case continued: 'It is more appropriate to state that [the Union citizen daughter] is in fact a member of the household of her [third country national] mother.'

33. Addressing that aspect of the Minister's decision, Cooke J concluded (at para. 33):

> 'In the judgment of the Court, however, while the proposition may be novel it is not unarguable that the mother in the circumstances might be considered a member of "the household" of the union citizen notwithstanding the fact that the Union citizen is only three years old. It is true, as the contested decision seems to suggest, that the notion of "household" normally connotes a group of individuals living together under a "head of household". The term is defined in the Oxford dictionary as "the people living in a house, esp. a family in a house; a domestic establishment." It is not beyond argument, therefore, that the expression "the household of the Union citizen" is not used in that proprietary sense but it is open to the interpretation that if one individual is a Union citizen all members of the group could be regarded as equal members of the household.'

34. Cooke J thus granted the applicants leave to apply for judicial review of the Minister's decision on the ground that Minister erred in law and in fact in deciding that the third country national mother was not a "permitted family member" within the meaning of the definition of that expression in Regulation 2(1) of the 2006 Regulations because she was not a member of the household of her daughter as a Union citizen.

35. In the written legal submissions filed on their behalf in this case, the applicants do not acknowledge the decision in *Wang*. Nonetheless, their argument begins from the proposition, which Cooke J in that case considered to be novel though not unarguable, that the term 'membership of the household of the Union citizen' should be interpreted as connoting simply membership of the same household as the Union citizen, not membership of the Union citizen's household in the hierarchical or possessive sense. The former, they baldly assert, is the normal meaning of the words used. Thus, the applicants deny what Cooke J suggested was the normal connotation of the word 'household', namely, a group of individuals living together under a head – or, alternatively, heads - of household. They contend that, instead, 'household' should be interpreted in the sense of 'those who dwell under the same roof and compose a family' or 'a social unit composed of those living together in the same dwelling', which they point out are the two alternate definitions of that word provided by the Merriam Webster online dictionary of American English. Those definitions of 'household' closely correspond to that provided by the *Oxford Dictionary of English* (2nd edn, 2003), namely 'a house and its occupants regarded as a unit'. But there are several problems with the applicants' argument on this issue.

36. The first is that it is the phrase *'the household of the Union citizen'* and not the single word *'household'* that requires interpretation. The applicants rely on the definition of the English language word *'household'* to argue that the term *'household of the Union citizen'* should be seen as connoting *'the household of which the Union citizen was a member'*, rather than *'the household of which the Union citizen was a householder*.' For what it is worth, the Merriam Webster online dictionary of American English defines the cognate word 'householder' as 'a person who occupies a house or tenement alone or as the head of a household' and the edition of the Oxford Dictionary of English already cited defines the same word to mean 'a person who owns or rents a house; the head of a household.'

37. The second and more fundamental difficulty with the applicants' argument is that the term *'the household of the Union citizen'* is a term drawn directly from the Citizens' Rights Directive and, hence, a term of European Union law. In Case 283/81 CILFIT [1982] ECR 3415, the European Court of Justice summarised the principles governing the interpretation of Community law in the following way:

> '18. To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.
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> 19. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.
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> 20. Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.'

38. It is difficult to reconcile the applicants' argument on interpretation, predicated as it is on a definition drawn from a dictionary of American English, with the application of the principles just described.

39. There is persuasive authority on the point in the jurisprudence of the courts of England and Wales. In *KG (Sri Lanka) and AK (Sri Lanka) v Secretary of State for the Home Department* [2008] EWCA Civ 13, the second of the two appellants, AK, was a national of Sri Lanka, born in 1981, who lived in the family home in Sri Lanka until 1991 with his parents, a brother, three sisters, his mother's sister, the latter's husband and their four daughters and two sons; a household of 15 persons. In 1991, the family was dispersed by the civil strife then endemic in that country. AK arrived in the United Kingdom in 2000, where his refugee status claim was refused. His appeal against that refusal was rejected in 2001, after which he remained in the UK unlawfully. He claimed residence rights as a family member of a daughter of his mother's sister – hence, his cousin - who had left Sri Lanka in 1992 and successfully claimed asylum in France, becoming a French – hence, a Union – citizen, in 2000, before moving to the UK in the exercise of her free movement rights in 2005.

40. In a portion of the judgment in that case headed '*Members of the household of the Union citizen*', the Court of Appeal (per Buxton LJ; Sedley and Hooper LJJ concurring) held (at paras. 77 and 78):

> '77. There was some tendency in the argument before us to read this requirement as one of being members of the same household; or, as was said on behalf of AK, members of a communal household. That is not what ['the Citizens' Rights Directive] says, nor was that the condition in Regulation 1612/68, which requires [a family member – or 'other family member' ('OFM') - within the terms of Art. 10(2) of Regulation 1612/68] to have been, in relation to the Union citizen,

under his roof, not under the same roof. It seems very likely that the assumption is that the household will indeed have been that of the Union citizen, that is, that he was in colloquial terms head of it, the relations were under his roof, and on that basis he can reasonably wish to be accompanied by the members of it when he leaves for another country. If, on the other hand, the liberty extends to what might be called collateral members of the same household, then it is very difficult to see why for instance cousins with a close relationship but not actually living together are excluded; or why, to give a concrete example, it should be crucial to the case of AK that he was living in the same house, rather than the same street, as his cousin.

78. KG asserts membership of the Union citizen's household, but the household in their case was clearly that of their parents. AK asserts that the household headed by his parents was the household of his seventeen year old cousin who was living there with her own parents. That seems to be an abuse of language. The claim also demonstrates the reach of the appellants' case. The household in question was lived in by fourteen people, all of whom if living unlawfully in the United Kingdom would on the appellants' argument qualify for a residence permit as soon as the Union citizen relative arrived here. To them would have to be added any other relatives of the Union citizen with whom she happened to have lodged or shared a flat either in Sri Lanka or in any other country that she passed through on her way to France.'

41. In *Bigia & Ors. v. Entry Clearance Officer* [2009] EWCA Civ 79, the Court of Appeal was required to consider the extent to which certain propositions in *KG (Sri Lanka)* and *AK (Sri Lanka)*, including the one just quoted, required modification in light of the judgment of the Court of Justice of the European Union ('CJEU') in Case C-127/08 *Metock v Minister for Justice, Equality and Law Reform* ECLI:EU:C:2008:449. The Court of Appeal (*per* Maurice Kay LJ; Clarke MR and Tuckey LJ concurring) reached the following conclusion (at para. 43):

'In my judgment, *Metock* does not impact on those propositions. I accept that Article 3.2(a) is based on the same policy considerations as Article 2.2 – "ensuring the protection of the family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the EC Treaty" (here the right of free movement and residence of the Union citizen) and aiming "to strengthen the right of free movement and residence of all Union citizens". That is why the Directive goes beyond Article 2.2 family members and makes provision, albeit in a different way, for OFMs. However, the emphasis remains on elimination of obstacles to the Treaty rights of the Union citizen rather than a policy of family reunification.'

42. *Secretary of State for the Home Department v MR & Ors* [2010] UKUT 449, was a judgment of the Immigration and Asylum Chamber of the Upper Tribunal, sitting in Belfast, which culminated in the preliminary reference that resulted in the judgment of the CJEU in Case C-83/11 *Secretary of State for the Home Department v Rahman* ECLI:EU:C:2012:519. At paragraph 35 of its judgment, having observed that the membership involved is that of Union citizen's household, the Upper Tribunal recognized that membership of the household requires at least physical cohabitation under the same space. It is important, however, to read that statement in the context of both the paragraph in which it appears and the judgment overall. The Upper Tribunal was there considering the judgments of the Court of Appeal in *KG (Sri Lanka)* and *Bigia* and, in doing so, was considering the extent to which 'dependency' and 'membership of the household' had been treated together for convenience in some parts of those judgments, without forgetting that they are alternative concepts with materially different requirements, as evidenced by the fact that 'dependence' does not necessarily require physical cohabitation at the material time, whereas membership of a household does. I find it impossible to read the Upper Tribunal's judgment as authority for the proposition that mere residence in the same household as that in which a Union citizen resides qualifies as membership of the household of that Union citizen for the purposes of Art. 3(2) of the Citizens' Rights Directive.

43. In *Moneke v Secretary of State for the Home Department* [2011] UKUT 341, the Upper Tribunal, in providing guidance to immigration judges in that jurisdiction, specifically considered the meaning of Article 3 (2) of the Directive, pending the determination of the reference in *Rahman*, holding in material part (at para. 41):

'Membership of a household has the meaning set out in KG (Sri Lanka) and Bigia (above): that is to say it imports living for some time under the roof of a household that can be said to be that of the EEA national for a time when he or she had such a nationality. That necessarily requires that whilst in possession of such nationality the family member has lived somewhere in the world in the same country as the EEA national, but not necessarily in an EEA state.'

44. The Upper Tribunal returned to the issue once more in *RK v Secretary of State for the Home Department* [2010] UKUT 421. That was a case that turned, ultimately, on the question of whether the appellant in India could be considered to come within the terms of Art. 3(2) of the Citizens' Rights Directive as a dependant of her Portuguese – and, hence, Union citizen – mother-in-law in the United Kingdom. The appellant's parents-in-law had moved to the United Kingdom exercising Treaty rights in 2003. The appellant's husband had joined his parents there in 2005 as a dependent family member within the terms of Art. 2(2) of the Citizens' Rights Directive. The appellant and her husband had married in India in 2007, following which the appellant had moved into the house in India owned by her father-in-law, in which her parents-in-law had lived prior to their departure for the UK. The appellant's claim was that she was both a member of her Union citizen mother-in-law's household in India and a dependant of her mother-in-law, through remittances she received from her parents-in-law there. The Upper Tribunal shortly disposed of the former contention in the following way (at paras. 17 and 18):

'17. Before us Mr Jafferji focused his principle argument on the submission that Metock and the subsequent case of C-162/09 Lassal demonstrate that a broad meaning has to be given to the word 'household' and applying that broad meaning the appellant could be said to have been residing in her in-laws' household in India. He recognised that nothing in the case law he relied on was addressed to Article 3(2) or the meaning of a household.

18. We do not consider that such an argument has any substance. As Buxton LJ pointed out in KG (Sri Lanka) the previous expression used in Article 10(2) of Regulation 1612/68 was "under his roof". This suggests that not merely is a household a community that lives together in the same accommodation but the household should be that of the Union citizen. The appellant has never lived in her mother in law's household. She lives in a house owned by her father in law in which the mother in law used to live, but ceased living there four years before she became a member of the mother in law's family.'

45. In the written legal submissions filed on their behalf, the applicants allude to the existence of the caselaw just described without directly addressing any of it. Their contention is that it is unnecessary to do so because it has all been overturned or swept away by the judgment of the CJEU in *Rahman*, already cited, which the applicants describe as 'the primary decision on the issue'. Unfortunately, the applicants do not deal with the decision in *Rahman* in any detail either.

46. In *Rahman*, none of the six questions referred by the Immigration and Asylum Chamber of the Upper Tribunal to the CJEU for preliminary ruling deals with the interpretation of the term 'members of the household of the Union citizen' in Art. 3(2) of the Citizens'

Rights Directive. The applicants appear to rely instead on the conclusion of the CJEU that the term 'facilitate' in Art. 3(2) must be given its normal meaning as the basis for the contention, which I have no hesitation in accepting, that the interpretation of the term 'members of the household of the Union citizen' should be approached in the same way *i.e*. given its normal meaning. The problem for the applicants is that that, affording that term its normal meaning (and, in particular, paying due regard to the use within it of the preposition 'of'), it seems to me that the interpretation accepted in the jurisprudence already described is the correct one. There is a striking difference between the phrase actually used in Article 3(2) – *i.e*. 'household *of* the Union citizen' - and the meaning of that phrase for which the applicants contend, namely '*same* household *as* the Union citizen.'

47. In support of their argument, the applicants pray in aid the opinion of Advocate General Bot, delivered on 27 March 2012, in *Rahman*. They place reliance on the Advocate General's preliminary remarks concerning the second of four rules of interpretation likely to inform the CJEU's interpretation of Art. 3(2) based on the decisions in which that court has interpreted other provisions of the Citizens' Rights Directive. Specifically, Advocate General Bot stated (at paras. 35 to 37):

> '35. The Court has ruled, second, that the provisions of that directive must be given a teleological and appropriate interpretation having regard to their objective [Case C-127/08 *Metock and Others* [2008] ECR I-6241, paragraph 68]. It should be stated in this regard that Article 3(2) of Directive 2004/38 responds to two additional concerns.
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> 36. The first objective of that provision is to promote the free movement of Union citizens. Thus, recital 1 in the preamble to Directive 2004/38 states that citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect [Case C-162/09 *Lassal* [2010] ECR I-9217, para. 29, and Case C-434/09 *McCarthy* [2011] ECR I-3375, para. 27]. With this in mind, the right to family reunification is understood as the corollary to the right of free movement for the Union citizen, based on the principle that the latter may be dissuaded from moving from one Member State to another if he cannot be accompanied by the members of his family. Family reunification thus enjoys indirect protection by reason of the potential impairment of the effectiveness of Union citizenship.
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> 37. According to recital 6 in the preamble to Directive 2004/38, the second objective of Article 3(2) of that directive is to promote family unity. The movement of members of the family of the Union citizen is therefore not exclusively protected as a right derived from the right of free movement enjoyed by the Union citizen, since it also enjoys protection through the right to the maintenance of family unity in a broader sense.'

48. The applicants submit that, adopting a teleological approach to the interpretation of the term 'members of the household of the Union citizen' in light of these two objectives of the Citizens' Rights Directive militates in favour of the interpretation for which they contend. They do not explain the reasoning by which the adoption of that approach to interpretation warrants, much less mandates, that conclusion but, presumably, they consider the express identification of the objective to promote family unity as providing the necessary support for it.

49. That argument is not a new one. It was addressed persuasively and at length by the England and Wales Court of Appeal in *KG (Sri Lanka),* already cited, in the following passage, under the heading 'Family reunion?' (at paras. 32 to 40):

> '32. Mr Gill strongly urged that the *principe moteur* of Directive 2004/38 was the encouragement of the Community value of family reunion; and that its terms should be interpreted and transposed into domestic law on that basis. It is easy to see why this was an attractive claim for the appellants. Even if there are difficulties in explaining why the appellants, or for that matter any or all of the fourteen relatives who shared a household with AK in Sri Lanka in 1992, should have a right to join their relation in the United Kingdom in 2008, such an event would clearly qualify under the description of family reunion. However, and accepting the submissions of Mr Palmer, I consider the basis of the argument is misconceived.
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> 33. Put shortly, Community law recognises a right of movement on the part of relations not in order to support family values as such, but in order to make real the right of movement of the Union citizen; who may be deterred from exercising that right if he cannot take his relevant family with him. That is the constant theme of the cases that we were shown in support of the attempt to assert the doctrine of family reunion.
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> 34. In Case C-291/05 *Eind* Mr Eind was a Dutch national who went to work in the United Kingdom, being joined there by his daughter, a national of a third country. Miss Eind was under 21, and accordingly would have been entitled to the benefit of Directive 2004/38 by reason of her relationship alone: see … the first phrase of article 2(2)(c). Mr Eind then returned to Holland, where he was economically inactive. The Dutch government argued that Miss Eind had no right to live in Holland when her father moved to the United Kingdom, and so he could not have been deterred from making the move to the United Kingdom by the possibility that she might not be able to move back to Holland with him when he returned there.
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> 35. The ECJ disagreed. Mis Eind was not unlawfully present in the United Kingdom, but had been granted rights of residence there: see §11 of the ECJ's judgment. In that context, the ECJ said, at its §§ 36-37, that a Union citizen might be deterred from exercising his rights of movement, as Mr Eind had done by moving to the United Kingdom by
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> > the prospect…of not being able, on returning to his Member State of origin, to continue living together with close relatives, a way of life which may have come into being in the host Member State as a result of marriage or family reunification. [27] Barriers to family reunification are therefore liable to undermine the right of free movement which the nationals of the Member State have under Community law, as the right of a Community worker to return to the Member State of which he is a national cannot be considered to be a purely internal matter.
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> 36. The importance of this for our purposes is the clear recognition that "family reunification" is relevant, but relevant only, to the extent to which it assists in the exercise of the Community right of the Union citizen. That is further underlined by the ECJ in Case C-60/00 *Carpenter* [2002] ECR I-06279. Mr Carpenter was a national of the United Kingdom, who exercised a Community right, not of movement, but of the provision of services (by telephone) to customers in other member states. Mrs Carpenter was a third country national with no right to remain in the United Kingdom under English domestic law. The ECJ held that it would be disproportionate under Community law, read with Article 8 of the European Convention on Human Rights, for the English authorities to deport her. An important factor in the assessment was that her removal would interfere with Mr Carpenter's exercise of his Community right to provide services to persons in other

member states. The ECJ said, as its §§ 38-39:

> …it should be remembered that the Community legislature has recognised the importance of ensuring the protection of family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty, as is particularly apparent from the provisions of the Council regulations and directives on the freedom of movement of employed and self-employed workers within the Community…[39] It is clear that the separation of Mr and Mrs Carpenter would be detrimental to their family life and, therefore, to the conditions under which Mr Carpenter exercises a fundamental freedom. That freedom could not be fully effective if Mr Carpenter were to be deterred from exercising it by obstacles raised in his country of origin to the entry and residence of his spouse.

37. Here again, the emphasis is on the recognition of family life as a support to, and encouragement of, the exercise of rights by the Union citizen, and not as an end in itself. As Advocate-General Geelhoed said of *Carpenter* in §72 of his opinion in Case C-1/05 Jia [2007] ECR I-00001]:

> …although it is clear that Article 10 of Regulation 1612/68 and Article 1(1) of Directive 73/148 have as their *effect* the protection of family life, it cannot, in my view, be said that this was an *objective* of these provisions. Where the Court observed first in *Carpenter*, and later in [Case C-459/99 (*MRAX*)], that in adopting the regulations and directives, 'the Community legislature has recognised the importance of ensuring the protection of family life of nationals of Member States in order to eliminate obstacles to the exercise of fundamental freedoms guaranteed by the Treaty', viewed in the context of the time when these acts were adopted, this was merely an implicit and, at most, a secondary consideration. There is no reference to Article 8 of the ECHR in the preambles to Regulation No 1612/68 or Directive 73/148, or, significantly, in their successor, Directive 2004/38. The latter only refers in a general sense to compliance with the ECHR….. I do not consider, therefore, that the protection of family life can be used as a guideline for the interpretation and scope and the content of the relevant provisions in Regulation No 1612/68 and Directive 73/148. [emphasis in the original]

38. Mr Gill nonetheless took us to two materials that he claimed point in a different direction. First, although, as the Advocate- General points out, the recitals to Directive 2004/38 say nothing about the essential provision as to family life, article 8 of the ECHR, recital (6) does say that the provisions as to OFM are introduced "in order to maintain the unity of the family in a broader sense". But that says no more than that, as article 3 makes clear, the provisions of the Directive are extended, in limited terms, to persons who are not members of the immediate family, article 2 family members. It does not displace Advocate-General Geelhoed's perception of the basis of Directive 2004/38 and was not seen by him as doing so.

39. Second, we were shown a publication of the Commission, *Civis Europaeus Sum*, in which Mr Frattini, a Vice-President of the Commission, says

> Community law in the form of Directive 2004/38/EC, fulfils one of humanity's most long-standing aspirations: the possibility of moving without restrictions or hindrances and settling down in the country of one's choice together with one's family

Mr Gill saw some help in the broad and aspirational terms of that statement. But, even if such material could offset the jurisprudence of the ECJ, Mr Frattini's statement goes no further than to record that Directive 2004/38 creates rights of movement for humanity (provided they are Union citizens), and not just for workers, and makes provision for Union citizens to be accompanied by their families. None of these general propositions are in issue before us; all of them are neutral in the dispute that is in issue before us, of who in detail are the beneficiaries of Directive 2004/38 and on what terms.

40. The upshot is therefore that it is necessary to approach the interpretation of Directive 2004/38 on the basis of the jurisprudence set out above on the exercise of rights of movement by Union citizens, without presuppositions about larger objectives of family reunification.'

50. For my part, I can find nothing in the analysis of the England and Wales Court of Appeal in *KG (Sri Lanka)* inconsistent with that of the CJEU or, indeed, that of Advocate General Bot in *Rahman*. I conclude that the line of authority already described, of which *KG (Sri Lanka)* forms the leading case, retains its full persuasive force and should be followed.

51. It is probably superfluous to add that, when the England and Wales Court of Appeal has had occasion to consider the judgment in *Rahman* since the CJEU handed it down, it has failed, just as I have done, to discern in it the effect contended for by the applicants in this case; see *Oboh & Ors. (Nigeria) v. Secretary of State for the Home Department* [2013] EWCA Civ 1525; [2014] 1 W.L.R. 1680 and *EO (Nigeria) v. Secretary of State for the Home Department* [2014] EWCA Civ 1418.

52. The applicants argue that the interpretation of the term 'members of the household of the Union citizen' adopted by the Minister is restrictive and deprives Art. 3(2) of the Citizens' Rights Directive of its effectiveness, in the manner deemed impermissible by the CJEU in *Metock*, already cited, (at para. 84). That is precisely the argument that was made to, and rejected by, the England and Wales Court of Appeal in *Bigia* and the Upper Tribunal in *RK* in the manner I have already described. I adopt the reasoning that underpins each of those judgments and I reject that argument.

53. The applicants submit that the requirement that membership of the 'household of the Union citizen' be anything more than contemporaneous membership of the same household as the Union citizen introduces an unworkable element of uncertainty into the interpretation of that term. They contend, albeit without adducing sociological or other evidence on the point, that few households in the Member States of the European Union have a designated 'head', and that this deprives the normal meaning of the words used in Art. 3(2) of the necessary legal certainty. That is a 'straw man' argument. Attributing a normal meaning to the words 'members of the household of the Union citizen' does not require or entail the identification of a *designated* 'head' (or the identification of the *designated* 'heads') of a household. The question of whether a household was, or is, that of the Union citizen concerned is one of fact in EU law, just as the question of whether a family member is a dependant of a Union citizen is. It seems to me self-evident that there may be more than one householder in many households, but I fail to see how that give rise to any lack of the necessary legal certainty, since each such Union citizen householder would come within the terms of Art. 3 (2).

54. Even if that were not so, it is difficult to see how the particular meaning of the term 'members of the household of the Union citizen' contended for by the applicants does not give rise to at least as much potential for uncertainty in its application as the more obvious one. After all, what does it mean to be a member of the *same* household *as* a Union citizen? How long and in what circumstances does a family member have to lodge with a Union citizen to qualify as a member of the same household? Are all of the occupants of a family compound members of the same household? Unless the question of 'membership of the *same* household *as* the Union citizen' is also addressed as one of fact on a case by case basis, it is plainly an interpretation attended by at least as much conceptual uncertainty as 'the household of the Union citizen'; see the judgment of Buxton LJ in *KG (Sri Lanka),* already cited, at para. 78.

55. Although they never sought or obtained leave to raise it as a ground, the applicants go on to argue that the asserted failure of the Minister to specifically require Mr Ali to produce evidence that the address in the United Kingom he shared with Mr Subhan was the household *of* Mr Subhan as a Union citizen amounted to a breach of their entitlement to fair procedures. That argument is untenable, as well as impermissible. There was no obligation on the Minister to provide the applicants, who were legally represented at all material times, with additional legal advice concerning the necessary requirements to obtain a residence card as a permitted family member. Those requirements are set out in the 2006 Regulations and the Citizens' Rights Directive. There is, of course, an obligation on the Minister to conduct an extensive examination of the personal circumstances of the family member concerned but that cannot extend to the provision of an advice on proofs.

56. For the purpose of this judgment, I have disregarded the averments in the affidavit of Mr Byrne, sworn on 10 August 2017, in which, as the decision-maker concerned, he seeks to clarify what the terms of the Minister's decision were intended to convey. It seems to me that the Minister's decision must stand or fall on its own terms, properly considered, and I have significant doubt about the correctness of permitting a decision-maker to adduce extrinsic evidence of what was intended to be conveyed by the decision *ex post facto*. In *Deerland Construction v Aquatic Licensing Appeals Board* [2009] 1 I.R. 673 at 693, Kelly J cited with approval the following proposition, amongst others, from the judgment of Stanley Burnton J in *Nash v Chelsea College of Art and Design* [2001] EWHC (Admin) 538, (Unreported, English High Court, Stanley Burnton J., 11th July, 2001):

> "Where there is a statutory duty to give reasons as part of the notification of the decision, so that (as Law J. put it in R. v. Northamptonshire C.C. ex parte W. [1998] E.L.R. 291) 'the adequacy of the reasons is itself made a condition of the legality of the decision', only in exceptional circumstances if it all, will the court accept subsequent evidence of the reasons."

In *Gavin v Criminal Injuries Compensation Tribunal* [1997] 1 I.R. 132 at 142, Carroll J refused to accept reasons given in the form of an affidavit sworn *ex post facto* by the Secretary to that tribunal on the basis that it was for the tribunal (or its decision) to speak for itself. I need only add that there is a clear statutory duty to give reasons for a refusal to permit a person claiming to be a permitted family member to remain in the State under both Reg. 6(3)(c) of the 2006 Regulations and Art. 3(2) of the Citizens' Rights Directive.

57. For the reasons I have given, I conclude that the Minister did not err in law in her interpretation of the term 'member of the household of the Union citizen having the primary right of residence' in concluding that Mr Ali had failed to establish that he had been a member of the household of Mr Subhan in the United Kingdom.

The meaning of 'dependant of the Union citizen having the primary right of residence'

58. There is no disagreement between the parties concerning the proper interpretation of the term 'dependant of the Union citizen' for the purposes of Reg. 2 of the 2006 Regulations and Art. 3(2) of the Citizens' Rights Directive. Although I am given to understand that his judgment remains under appeal, both sides invoke the very careful and thorough analysis of the law conducted by Mac Eochaidh J in *Kuhn v Minister for Justice and Equality* [2013] IEHC 424, (Unreported, High Court, 22nd August, 2013), which I am grateful to adopt.

59. In that judgment, after quoting the relevant text of Art. 3(2)(a) and noting the significance of the obligation imposed on the host Member State by the last sentence of Art. 3(2) to undertake an extensive examination of the personal circumstances of the family member concerned and to justify any denial of entry or residence to such person, Mac Eochaidh J went on to explain (at paras. 12 to 19) :

> 12. Neither the Directive nor the domestic implementing measure provides a definition of dependence. The Court of Justice was asked about the meaning of the concept in a *Jia v. Magrationsverket* (Case-1/05) [2007] 1 KB 545. In that case a Chinese national married to a German national residing in Sweden applied for a Resident's Permit in Sweden for his retired Chinese mother. The visa was refused on the ground that there was insufficient proof of her financial dependence on her son and daughter-in-law. Questions were referred to the Court of Justice as to what was the meaning of "dependant" in the Directive.
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> 13. Advocate General Geelhoed noted that in Case-316/85 [1987] ECR 2811, para. 22 (known as *Lebon*), the ECJ ruled that the status of the dependant member of a worker's family:
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> > "is the result of a factual situation, namely, the provision of support by the worker, without there being any need to determine the reasons for recourse to the workers support, or to raise the question whether the person concerned is able to support himself by taking up paid employment."
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> 14. The Advocate General noted that this observation was repeated in *Chen v. Secretary of State for the Home Department* (Case C-200/02) [2005] QB 235, where, in the context of Directive 90/364 (on rights of residence), the court had observed that the status of a dependant member of the family of a holder of a right of residence "is the result of a factual situation characterised by the fact that material support for the family member is provided by the holder of the right of residence". Those observations by the Advocate General and the *dicta* from the *Lebon* and *Chen* cases indicate an assessment of dependence by reference to the fact that support is given by one person to another regardless of the effect of the support. The language does not enquire as to whether the support is needed to improve living standards or to maintain existence. However, the Advocate General goes on to say:
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> > "[95] That being said, in a case such as that in the main proceedings, where dependency is a criterion for establishing the right of a third national to reside with a Community citizen in a Member State, it does seem necessary for it to be established that there is indeed an actual need for financial support and that is attested to by adequate documentary evidence.

> [96] As such, whether or not the condition of dependency is fulfilled should be determined objectively, taking account of the individual circumstances and personal needs of the person requiring support. It would seem to me that the appropriate test in this regard is primarily whether, in the light of those personal circumstances, the dependant's financial means permit him to live at the minimum level of subsistence in the country of his normal residence, assuming that is not the Member State in which he is seeking to reside. In addition, it should be established that that is not a temporary situation, but that it is structural in character."

15. The Advocate General's Opinion thus marks a transition from dependence being established by the mere fact of support to dependence being established by reference to a proven need of financial support and proof of that need by documentary evidence. The Grand Chamber echoed the analysis of the Advocate General but adopted a slightly different approach. The court said:

> "37. In order to determine whether the relatives in the ascending line of the spouse of a Community national are dependant on the latter, the host Member State must assess whether, having regard to their financial and social conditions, they are not in a position to support themselves. The need for material support must exist in the State of origin of those relatives…"

16. As to the precise meaning of the provision in Directive 73/148, the Court said that the Directive:

> "…is to be interpreted to the effect that 'dependent on them' means that members of the family of a Community national established in another Member State within the meaning of Article 43 need the material support of that Community 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 have come at the time when they applied to join the Community national. Article 6(b) of that Directive must be interpreted as meaning that proof of the need for material support may be adduced by any appropriate means…"

17. Before I proceed to examine the final visa appeals I wish to comment upon an aspect of the *Jia* test. In the English language version of the decision of the ECJ, the heart of the test appears to be whether the financial assistance is needed "in order to meet their essential needs". The question which arises is what does the verb "to meet" mean? In its ordinary meaning, to meet someone's expenses meant to pay all of the expenses and not simply to make a contribution.

18. In the German language version of *Jia*, the verb deployed for "to meet their essential needs" is "um seine Grundbedürfnisse…zu decken". The verb "zu decken" translates as "to cover". Thus, the German language version of the test suggests that the financial assistance is needed to cover or to meet all of the costs of essential needs. The French language version of *Jia* suggests a slightly different meaning and its text is "de nécessiter le soutien materiel…afin de subvenir à ses besoins essentiels…" The sense of the words "de subvenir à" is more suggestive of supporting or making a subvention or a contribution to essential needs. If I interpreted the test as meaning that dependence requires that assistance be given for all of a person's essential needs, this would greatly restrict the category of persons entitled to claim to be dependants. Only persons who could prove that they were reliant for all their food and shelter and any other essentials would ever qualify and this, in my view, could not have been the intended effect of the test announced in *Jia*. Such a restrictive test could only be designed by the European legislator and it has not given any indication of such an extreme restriction on the concept of dependence.

19. In my view, the *Jia* decision marks a shift from dependence which was found to exist merely where support is given, to dependence being based upon the need for assistance with the provision of the essentials of life. Neither the European Court of Justice nor the European legislator nor the Irish legislator has ever identified exactly how much support is required to be given to the recipient in order for that person to be said to be dependent on the European based donor. My view is that where outside help is needed for the essentials of life (for example, enough food and shelter to sustain life) then regardless of how small that assistance is, if it is needed to attain the minimum level to obtain the essentials, then that is enough to establish that the recipient is dependent. (The essentials of life will vary from case to case: expensive drugs maybe an essential for someone who is ill, for example.)"

60. The applicants place particular reliance on Case C423/12 *Reyes v Migrationsverket* ECLI:EU:C:2014:16 in which the CJEU found that it is not necessary for a family member claiming dependence on a Union citizen to establish that he or she has tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his or her country of origin or to otherwise support himself or herself - nor is it material to the requirement of dependence that the family member is deemed well placed to obtain employment in the host Member State and intends to do so. However, the applicants refer to that judgment solely for the purpose of praying in aid the following passage from it (at para. 24):

> 'The fact that, in circumstances such as those in question in the main proceedings, a Union citizen regularly, for a significant period, pays a sum of money to that descendant, necessary in order for him to support himself in the State of origin, is such as to show that the descendant is in a real situation of dependence vis-à-vis that citizen.'

61. The applicants submit that Mr Ali is in precisely the same position in this case as Ms Reyes was in that one. However, that submission merely begs the question in the classical sense of that term i.e. it assumes that Mr Ali has succeeded in proving that Mr Subhan, as a Union citizen, regularly, for a significant period, paid Mr Ali a sum of money necessary for Mr Ali to support himself in the United Kingdom.

62. In *Reyes*, although the essential claim of dependence was similar, the position in fact was very different. Ms Reyes was a citizen of the Philippines whose mother moved to Germany in 1990 when Ms Reyes was three years old, leaving her, together with her two sisters, in the care and custody of her maternal grandmother where she remained for her entire childhood and adolescence. Ms Reyes' mother, who subsequently obtained German citizenship, stayed in close contact with her family, sending money each month to support them and to pay for their education and visiting them each year. With her mother's financial support, Ms Reyes qualified as a nursing assistant after attending college in the Philippines, although she never held a job there, nor did she ever apply for social security assistance. In 2009, Ms Reyes' mother moved to Sweden to pursue a relationship with a Norwegian citizen there, who she subsequently married in 2011. From 2009 onwards, that Norwegian citizen made regular remittances to Ms Reyes. In 2011, Ms Reyes applied for a residence permission, as a dependent child (or 'direct descendant') of her mother and stepfather under Art. 2(2) of the Citizens' Rights Directive. The manner in which the regular payments to Ms Reyes for her support in the Philippines were evidenced in the main proceedings is not addressed in the judgment of the CJEU.

63. Mr Ali is a citizen of Pakistan, born in 1986. He lived in the same family compound as his cousin Mr Subhan, born in 1978, until the latter left for the United Kingdom with his parents and siblings in 1997, when Mr Ali was 11 years old. Very little appears to have been disclosed about Mr Ali's personal and family financial circumstances in Pakistan, save that he obtained the equivalent of a bachelor's degree in economics there. In 2010, when he was approximately 24 years old, Mr Ali travelled to the United Kingdom on a four-year student visa that was due to expire on 28 December 2014. While in the United Kingdom as a student, he resided in the same household as Mr Subhan's parents, siblings and Mr Subhan. That house is owned by Mr Subhan's brother. Mr Subhan became a United Kingdom citizen on 8 February 2013.

64. Mr Ali claims that he was dependent on Mr Subhan while in Pakistan. The evidence he has produced to corroborate that claim comprises copies of the receipts for seven money transfers that occurred between 3 February 2009, when Mr Ali was approximately 22 years old, and 13 May 2010, when Mr Ali was 24, amounting in the aggregate to £4,675 over that fifteen-month period. The applicants assert that, for the greater part of the four years Mr Ali spent in the United Kingdom, as an economics graduate studying accounting and business administration, he did not have a bank account and was entirely dependent on his cousin Mr Subhan, who covered his rent, paid for his studies and gave him money for his general living expenses, although no evidence has been produced to corroborate these disbursements by Mr Subhan. In November 2014, Mr Ali opened a building society account in the United Kingdom into which Mr Subhan made four transfers, totalling £700, between 6 November 2014 and 13 January 2015, as evidenced by copies of Mr Ali's account statements. On 17 February 2015, Mr Subhan sent a money transfer in the sum of €237 to Mr Ali, for which a copy receipt has been produced.

65. That was the relevant evidence by reference to which Mr Ali sought to establish that he was a dependent family member of Mr Subhan in the United Kingdom, as the country from which he had come. In the decision under challenge, the Minister concluded that Mr Ali had failed to do so.

66. In *Moneke*, already cited, the Upper Tribunal stated (at paras. 42 and 43):

> '42. We of course accept…that dependency does not have to be "necessary' in the sense of the [United Kingdom] Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his own economic activity; see [*SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA Civ 1426]. Nevertheless, where, as in these cases, able bodied people of mature years claim to have been always dependent upon remittances from a sponsor, that may invite particular[ly] close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.
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> 43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters.'

67. The approach recommended in *Moneke* appears to me to be the correct one. In this case, Mr Ali was on notice from the express terms of the first instance decision letter of 21 December 2015 that the Minister was not satisfied that he had established his dependency upon Mr Subhan while in the UK. The onus was on Mr Ali to satisfy the Minister by cogent evidence that was in part documented and could be tested that the level of material support he received from Mr Subhan, its duration, and its impact upon his personal financial circumstances combined together to meet the material definition of dependency. The Minister concluded that Mr Ali had failed to do so. I confine myself to observing that I can find nothing in that decision to suggest that the Minister failed to have regard to any of the evidence submitted by Mr Ali, nor can I find anything in the decision to suggest that the reasons given for it fail the test of reasonableness under the well-established *Keegan* and *O'Keefe* principles, confirmed by the Supreme Court in *Meadows v Minister for Justice* [2010] 2 IR 701.

Conclusion

68. For the reasons given, I refuse the application.