



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

Appeal Numbers: EA/00336/2021  
(UI-2021-000946)

**THE IMMIGRATION ACTS**

**Heard at Bradford IAC  
On the 25 May 2022**

**Decision & Reasons Promulgated  
On the 15 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**AND**

**MR MOHAMMAD HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Diwnycz, Senior Presenting Officer

For the Respondent: Mr Aslam, Counsel instructed on behalf of the appellant

**DECISION AND REASONS**

*Introduction:*

1. The Entry Clearance Officer appeals with permission against the decision of the First-tier Tribunal (Judge Ross) (hereinafter referred to as the "FtTJ") who allowed the appeal against the decision made to refuse the application for a family permit as a dependent extended family member of an EEA national in a decision promulgated on 6 September 2021.

2. The FtTJ did not make an anonymity order no application was made for such an order before the Upper Tribunal.
3. Whilst this is an appeal brought by the ECO, I intend to refer to the parties as they were before the First-Tier Tribunal.

*The background:*

4. The background is set out in the decision of the FtTJ and the evidence in the bundle. The appellant is a national of Bangladesh.
5. The appellant, applied on 21 October 2020 for a family permit as the extended family member of the sponsor ( the appellant's father in law), a national of Italy, resident in the United Kingdom. The sponsor moved to Italy from Bangladesh in 1993 and then moved to the United Kingdom in May 2019.
6. The application was refused in a decision dated 26 November 2020. The papers before the FtT referred to earlier applications made by the appellant. None of those decisions were in the respondent's bundle and they formed no part of the evidence before the FtT t the hearing. Similarly they have not been provided for the purposes of this hearing.
7. The decision letter stated that to apply for an EEA permit as the extended family member of an EEA national in accordance with Regulation 8 of the Immigration (EEA) Regulations 2016, the appellant must satisfy the respondent that he is financially dependent on the sponsor.
8. The ECO acknowledged that the appellant had submitted money transfer receipts sent by the sponsor to him but that they were sent immediately prior to the application (within the last 10 months). The ECO considered the limited evidence in isolation did not show that the appellant was financially dependent on the Sponsor and would expect to see substantial evidence considering the length of time the sponsor was resident in the UK since 2019. Further, the evidence submitted showed that the appellant's father-in-law only worked 26 hours per week and earned a net income of approximately £220 per week. Given the sponsor's low income, the ECO was not satisfied that it was sustainable for the sponsor to support the appellant financially as well as meeting his own needs and the needs of his own family members who were reliant on him.
9. Thus he was not satisfied that the appellant was dependent on the sponsor and therefore was not satisfied that he was an extended family member in accordance with Regulation 8 (2) of the Immigration (EEA) Regulations 2016. The application for an EEA family permit was refused as the appellant could not meet all of the requirements of Regulation 12.

10. The appellant appealed and the appeal came before the FtT on the 18 August 2021. In a decision promulgated on 6 September 2021 the FtT allowed his appeal having found that the appellant had demonstrated on the balance of probabilities that he was dependent on the sponsor ( see paragraph 14 of the decision). The FtT therefore allowed the appeal.
11. Permission to appeal the decision was sought and on 22 October 2021 permission was granted by FtTJ Parkes.

*The hearing before the Upper Tribunal:*

12. The hearing before the Upper Tribunal took place on 25 May 2022. Mr Diwnycz, Senior Presenting Officer appeared on behalf of the respondent (“ECO”) and Mr Aslam of Counsel appeared on behalf of the appellant, who had appeared before the FtTJ.
13. Mr Diwnycz relied upon the grounds. He submitted that it was a simple question that the assistance was not required. He sought to raise a point concerning disparity of income and referred to a note which had not been provided. He therefore relied upon the written grounds.
14. Mr Aslam on behalf of the appellant confirmed that there was no rule 24 response but made following oral submissions. He accepted that the judge had been wrong or was in error when setting out the point relating to the household by reference to paragraph 13. He submitted it was likely that this was a factual finding as to the background that they had all been living together in Italy. However he submitted any error was not material as the FtTJ had found as a fact that the appellant was dependent on his father-in-law. He submitted that paragraph 14 should not be read on its own but when read together with the record of evidence that the judge had set out in his decision at paragraphs 7-8 that the findings were adequate. The judge had the opportunity to hear the evidence and the oral evidence of the sponsor and the appellant’s wife.
15. He submitted that the grounds sought to argue a new point and that related to the paragraph in the grounds where it was argued that the appellant was not dependent on his father-in-law but dependent on his wife and/or his brother-in-law (paragraph 4 of the grounds). This was not a matter set out in the decision letter nor argued by the respondent at the appeal hearing and therefore it was wrong to raise it at such a late stage and it had no basis in evidence in any event as there had been no suggestion that the appellant’s brother-in-law had been supporting the appellant.
16. Mr Aslam therefore referred to the 2 matters set out in the decision letter, firstly the issue of whether the appellant was dependent on the sponsor financially which the FtTJ resolved in favour of the appellant

having taken into account that the current position was that he had no other means of income apart from that which he received from the sponsor. The 2<sup>nd</sup> issue was affordability, but the judge made a finding on this and recorded the evidence as to who made up the household at paragraph 7 and that it can be seen that the family members collectively contributed to expenditure and as a result of the collective contribution the sponsor (see paragraph 7) was left £100-£200 to support the appellant. The judge found the written evidence and the oral evidence to be credible and made that finding at paragraph [14] that he found the appellant to be financially dependent upon the sponsor. He submitted that paragraph 14 could only be understood by reference to the written and oral evidence because of the record of evidence that the judge had recorded. He had the disposable income to send to the appellant.

17. When seeking clarification on the issues, Mr Aslam confirmed that the only live issue was present dependency as set out in the decision letter and the point raised by the ECO relating to the affordability. No issue was raised at the hearing which dealt with the appellant being dependent upon his wife or brother-in-law rather than the sponsor or prior dependency.
18. Mr Diwnycz noted that at paragraph 7 there appeared to be a mistake when recording the amount and that where the judge had referred to £200 per week, which must mean £200 per month. Mr Aslam agreed with that.
19. By way of reply Mr Diwnycz submitted that the sponsor might be sending the money but that he was not the source of it but was passing on money from the appellant's brother-in-law or the appellant's wife. Mr Aslam submitted that this was not an issue that was put in evidence or raised at the hearing .
20. At the conclusion of the hearing I reserved my decision.

*Decision on error of law:*

21. The Immigration (European Economic Area) Regulations 2016 have now been revoked by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 Schedule 1(1) paragraph 2(2) (December 31, 2020. Revocation, however, has effect subject to savings specified in The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, Regulation 2 and Schedule 1 and The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 Regulations ("The Transitional Provisions").
22. Schedule 3 paragraph 5 of the Transitional Provisions deals with existing appeal rights and appeals and as this appeal was extant prior

to commencement day, and it is not argued by either party that the tribunal does not have jurisdiction to consider the appeal.

23. Prior to revocation Regulation 8 of the 2016 Regulations (as far as relevant) read as follows:

**Extended family member**

**8.-** (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (1A), (2), (3), (4) or (5).

(1A) ...

(2) The condition in this paragraph is that the person is-

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either-

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

24. The grounds of challenge do not set out with clarity the points relied upon. Dealing with the 1<sup>st</sup> paragraph, the grounds refer to paragraph [13] of the FtT's decision where the judge set out the factual findings as to the appellant's prior history where he lived from 2010 and 2019 as a member of the sponsor's household but the grounds state "it is abundantly clear that the appellant lives rent free in the house of a family friend". That confuses the present circumstances of the appellant, where he lives in a flat rent-free in Italy with the past circumstances.
25. As to paragraph 2, the grounds refer to paragraph 13 of the decision where the judge considered that the factual history of the appellant as part of the sponsor's household. Mr Aslam concedes that the paragraph in the grounds is correct and when asked for his explanation for the FtT's decision at paragraph 13, Mr Aslam submitted that the judge was perhaps setting out the factual findings as to the background of the parties with the appellant joining the sponsor in Italy in 2010 where he lived as a member of sponsor's household. In the documents before the FtT there was a family certificate from the Italian authorities.
26. Mr Aslam further submits that any error or misunderstanding in this respect is not material because the decision letter raises two issues both of which were considered by the FtT in his decision.

27. The 1<sup>st</sup> issue was whether the appellant was dependent upon the sponsor and secondly whether the sponsor's resources were sufficient to meet that dependency. He further submits that the decision letter did not raise the issue of prior dependency and that those were the 2 issues that the FtTJ was to determine.
28. Returning to the grounds the respondent challenges the issue of the appellant's dependency on the sponsor on the basis that the judge failed to give adequate reasons for the finding made at paragraph 14 that the appellant was financially dependent on sponsor. The reasoning in the grounds and adopted by Mr Diwnycz is that the judge accepted that the appellant had previously been able to assist his wife in a market business and that he could no longer do so as she was in the UK but that as he had previously worked in the business it was more likely than not that the appellant would continue to rely upon his wife and not the sponsor. It is submitted in the grounds that the evidence indicates that it is more likely than not that the appellant was dependent on the appellant's wife and brother-in-law.
29. As stated the grounds are not drafted with any clarity and the thrust of them as submitted by Mr Diwnycz is that the judge gave an inadequate reasons for finding that the appellant was financially dependent upon the sponsor and that the evidence shows that he was dependent on his wife and or brother-in-law are not the sponsor.
30. Mr Aslam makes 2 submissions. Firstly that there is sufficient reasoning provided at paragraph 14 in conjunction with the evidence recited at paragraph 7 and 8. He submits that the judge heard the oral evidence from both the sponsor and the appellant's wife and recorded that evidence at paragraph 7 and that the sponsor and his daughter provided regular maintenance to the appellant who is unemployed as he is not allowed to work in Italy. He lives in a flat owned by a family friend rent-free. The evidence at paragraph 7 set out the sponsor's wife and that the sponsor was left with £100 - £200 per week. Whilst the judge recorded the sum per week, both advocates confirmed the judge must made an error there and it was per month rather than per week. At paragraph 8 of the evidence before the judge was that his wife supported him also by sending money through friends.
31. The FtTJ set out his finding at paragraph 14 that he was satisfied on the balance of probabilities that the appellant was financially dependent upon the appellant's sponsor and his wife "this is because I accept the unchallenged evidence that the appellant had been able to assist his wife in the market business in Italy but can no longer do so, given that she is now in the UK. I find that it is likely that the appellant is reliant for his basic needs on the money sent to him by his father-in-law and his wife through friends, in order to support himself in Italy."

32. The evidence before the FtTJ was that the sponsor had sent money remittances for the appellant for his essential needs. This was exhibited in the documentary evidence including money remittances in the respondent's bundle at pages 39 onwards and page 87 and in the appellant's bundle at pages 33 - 41 and which were approximately £200 per month is roughly equated to the finding made by the judge and that this was the money that the sponsor had spare at the end of each month.
33. Further the judge accepted the evidence that the family lived collectively in the UK and the bills were shared which again supported the sponsor's evidence that he had the sum of between £100- £200 per month available.
34. Whilst the FtTJ could have been clearer, it is implied in the evidence recorded and the finding reached at paragraph 14 that he accepted the sponsor did have the requisite financial resources to send to the appellant which was one of the 2 issues raised in the decision letter.
35. In order to establish 'dependency' under the EEA Regulations, the appellant had to establish on a balance of probabilities that the sponsor was providing sources to meet his 'basic needs.' In *Lim v ECO, Manila* [2015] EWCA Civ 1383, Elias LJ (with whom McCombe and Ryder LJ) agreed) summarised what was required as follows at [32]:

“In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. ...”.
36. As to the 2<sup>nd</sup> issue as to whether the appellant was dependent on the sponsor whilst the reasoning was relatively brief, the FtTJ considered the factual evidence and the history which he accepted which was that the appellant had been living in the sponsor's household along with his wife and that when all left for the UK he had no source of income. The judge accepted that the appellant could not work in Italy and was unemployed as he was not allowed to work there (see paragraph 7 and paragraph 14). It follows from the acceptance of that fact that he had no source of income other than the financial monies sent to him by the sponsor that the appellant had demonstrated that he was reliant for his basic needs on that money (see paragraph 14). That being the case, the judge did give adequate reasons albeit they are brief.

37. As to the last point, the respondent's grounds submit that the appellant had previously relied upon money from his wife's business and that it was more likely than not that the appellant was dependent on the appellant's wife and brother-in-law. Mr Aslam submitted that this was not an issue either raised in the decision letter or at the hearing and constituted a completely new point. He submits the respondent had the opportunity to raise this issue at the hearing. In any event it is submitted that on the evidence it demonstrated that the money came from the sponsor and also from the appellant's wife.
38. The decision letter does not refer to this as an issue between the parties. If an issue is not ventilated before the FtT it is difficult to see how the judge could be in error. In any event, I accept the submission made by Ms Aslam that whilst the evidence was that the appellant's wife also provided support by sending money through friends, it was the sponsor who had sent the remittances and he was able to do so in light of how the household expenditure was managed (see paragraph 7). Further the basis upon which she entered the UK was that she was a dependent of her father, the sponsor. Any sums sent by her to the appellant did not mean that she had ceased to be dependent upon him or that the appellant was dependent upon her. On that basis even if the point was properly raised in the grounds they do not establish that the judge was wrong to accept the evidence of the sponsor that the money was provided for his essential needs (having no other source of income in Italy) and thus the appellant was dependent upon him.
39. For those reasons, I am not satisfied that it has been demonstrated that the decision of the FtTJ involved the making of an error on a point of law. The decision shall stand.

#### Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law, the decision shall stand.

Signed Upper Tribunal Judge Reeds

Dated: 30 May 2022