



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-004588**  
**First-tier Tribunal Nos:**  
**EA/52096/2021**  
**IA/13399/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Suryyia Begum**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Pipe, counsel, instructed by Immigration Justice Solicitors

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 11 May 2023**

**DECISION AND REASONS**

1. The appellant is a national of Pakistan. Her application for an EEA family permit to join her sister Zarda Bi, a Dutch national, as an extended family member was refused by the respondent on 30 March 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Fox

following consideration of the appeal on the papers, for reasons set out in a decision dated 30<sup>th</sup> March 2022.

2. The appellant claims the decision of Judge Fox is vitiated by material errors of law. It is said that the view expressed by the judge that the evidence relied upon by the appellant is “self-serving”, tells the reader nothing in terms of reasons. The appellant claims that in reaching his decision the judge failed to consider or engage with material evidence that was before the Tribunal. The judge appears to criticise the evidence relating to the appellant medical costs, and the income of the appellant’s son Ghulam, without any proper consideration of the evidence that was provided to the Tribunal in support of the appeal. Furthermore, the judge states the source of the sponsor’s financial resources are unclear. The issue in the appeal is whether the appellant is dependent upon her sponsor for her essential living needs and the sponsor’s income and ability to support the appellant was not an issue raised in the respondent’s decision. The appellant also claims the judge appears to accept there was evidence before the Tribunal of remittances sent between September 2019 and October 2021, but then irrationally concludes that the reliance on remittances and friends carrying cash, is unusual when the appellant and sponsor have their own bank accounts.

3. Permission to appeal was granted by First-tier Tribunal Judge Elliot on 27<sup>th</sup> September 2022. He said:

“Whilst individually the issues raised in the grounds might not give rise to an arguable error of law, their cumulative effect does. The Judge failing to note relevant documentary evidence in relation to the appellant’s son’s bank account, his taking account of the lack of evidence about the Sponsor’s income source (which was not in issue) , in finding that the appellant was only liable for a portion of her household bills (which was not determinative of dependency), and finding one the one had the existence of money remittances yet casting doubt on them because bank transfers might have been **more** convenient, may have led to the Judge’s finding that the appellant’s written account was ‘self-service.’ His reasons for doing so however are not adequately explained in the decision.”

4. Before me, Mr Pipe adopts his grounds of appeal and submits the reasons given by the judge are very difficult to follow. At paragraph [13] Judge Fox states the appellant has failed to discharge the burden upon her and rejects the appellant’s claim that she is financially dependent upon the sponsor as claimed. Mr Pipe submits it appears Judge Fox formed a view as to the merits of the appeal and then sought to set out some reasons to support that view. The appellant had provided an Affidavit setting out her monthly expenditure. Judge Fox appears to accept the appellant’s liability towards the costs of the electricity is consistent with the bill provided, and accepts the cost of medication is consistent with the sum set out in the Affidavit. However, without explanation, Judge Fox claims at paragraph [19] that there is no reliable evidence to demonstrate the extent of those costs from a source other than the appellant. That is in circumstances where the Judge appears to accept the appellant has provided 17 remittance advices for the period 10 September 2019 to 25 October 2021

amounting to £3,680.00. Mr Pipe submits the Judge has failed to have regard to the evidence that was before the Tribunal and the reasons given for dismissing the appeal make little sense.

5. Mr Lawson, rightly in my judgement, accepts the decision is very difficult to follow and that it is not clear whether the Judge had in mind the issue that was before the Tribunal. That is whether the appellant is dependent upon the sponsor to meet her essential living needs.

## DECISION

6. A party appearing before a Tribunal is entitled to know, either expressly stated by it, or inferentially stated, what it is to which the Tribunal is addressing its mind. The appellant is entitled to know the basis on which the decision reached by Judge Fox that the appellant is not financially dependent on the sponsor as claimed, has been reached. I am mindful of the reminder in Lowe v SSHD [2021] EWCA Civ 62 by McCombe LJ, at paragraph [29], that appellate courts should exercise caution when interfering with evaluative decisions of first instance judges.
7. Although brevity is often to be commended, having read the decision of Judge Fox, I entirely agree with both Mr Pipe and Mr Lawson that the reasons given by Judge Fox are very difficult to follow. Here the household in which the appellant lives in Pakistan comprises of the appellant, her son (Ghulam) and her two daughters. The appellant's children all work from the family home in which they live. The appellant's son works as a barber and her daughters work as seamstresses. Each of the children have their own income and it seems they each contribute to the household costs. The issue at the heart of the appeal was whether the appellant is dependent upon her sponsor to meet her essential living needs. Judge Fox clearly had some concerns about the evidence before him, but he does not grapple with the issue in the appeal, but simply states the evidence relied upon by the appellant may be interpreted as 'self-serving' when considering its subjective and limited features. There is a lack of clear findings. It would have been open to Judge Fox to find that the evidence does not establish that the appellant is dependent upon her sponsor for her essential living needs provided he had properly engaged with the evidence and explained why that evidence does not support the appellant's claim. He does not do so.
8. I also accept there is some merit in the claim made by the appellant that Judge Fox had regard to matters that were irrelevant in reaching his decision. Judge Fox notes at [22] that the appellant has provided 17 remittance advices for the period 10 September 2019 to 25 October 2021 amounting to £3,680.00. Judge Fox does not reach a clear finding as to

whether those remittances were received by the appellant and used by the appellant to meet her essential living needs. Rather, he appears to suggest that it is odd or unusual that the appellant relies upon remittances and friends carrying cash, when considered with the relative convenience of transfers between the bank accounts held by the appellant and sponsor.

9. I am satisfied that the decision of First-tier Tribunal Judge Fox fails to adequately engage with the evidence that was before the Tribunal and fails to give adequate or cogent reasons for his conclusion, addressing the issue in the appeal. It follows that I am satisfied the decision of Judge Fox is vitiated by a material error of law and must be set aside.
10. As to disposal, I accept the submission made by Mr Pipe that the appellant has not had a fair opportunity of having her appeal considered by the First-tier Tribunal. Given the nature of the error of law and the extent of fact-finding that is required, I am satisfied that the appropriate course is for the appeal to be remitted to the First-tier Tribunal with no findings preserved, to be determined by a judge other than Judge Fox.
11. The appeal was determined by Judge Fox on the papers at the request of the appellant. It will be for the appellant and her representatives to liaise with the First-tier Tribunal as to whether given the particular complexities that arise because of the appellant's living arrangements in Pakistan, it remains appropriate to deal with this appeal on the papers, or whether an oral hearing might be more appropriate so that the sponsor can give evidence and all the evidence can be tested.

### **Notice of Decision**

12. The appeal is allowed and the decision of First-tier Tribunal Judge Fox is set aside.
13. The appeal is remitted for consideration afresh before the First-tier Tribunal, with no findings preserved.

**V. Mandalia**

**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal

Immigration and Asylum Chamber

**12<sup>th</sup> May 2023**

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