



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

**Case No: UI-2022-002932**  
**First-tier Tribunal No:**  
**EA/04200/2020**

**THE IMMIGRATION ACTS**

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

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MUJAHID ALI**

Appellant

and

**S S H D**

Respondent

For the Appellant: Mr D Brown, of Drummond Miller, Solicitors  
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

Heard at Edinburgh on 6 December 2023

**DECISION AND REASONS**

1. FtT Judge Gillespie dismissed the appellant's appeal by a decision promulgated on 7 February 2022, finding there to be no genuine dependency of the appellant on the sponsor.
2. The appellant sought permission to appeal to the UT, advancing detailed grounds, the thrust of which is that the tribunal failed to deal with extensive evidence which was before it.
3. FtT Judge Parkes refused permission on 16 May 2022. The reasons for a prior refusal are usually irrelevant, but there was force in Mr Brown's point that the decision illustrates what went wrong, so they are set out here: ...

2. The grounds contain a large amount of information that was not before the Judge, for example the sponsor's witness statement of the 21/01/2022. That evidence is irrelevant in establishing that there was an error, the Judge cannot be expected to have considered information that had not been provided to him. The witness statement from the sponsor provides an explanation for the issues identified by the Judge and refers to supporting evidence. This should have been provided to the Judge. The grounds do not show that the Judge erred on the evidence and information that was available.

3. The grounds disclose no arguable errors of law and permission to appeal is refused.

4. The appellant sought permission from the UT, maintaining that the information, witness statement and explanation were all before the Judge.
5. It is clear from tribunal records, and accepted by the respondent, that such was the case.
6. UT Judge O'Callaghan granted permission on 16 September 2022, on the view that the Judge arguably did not provide adequate reasons for rejecting the evidence relied upon by the appellant as to dependency.
7. The respondent's rule 24 response makes detailed arguments on why the evidence might not have been found to disclose "genuine dependency". It contends finally at [9] that there is "no irrationality / perversity" in the Judge's approach, and that the findings reached "were open on the evidence".
8. Mr Brown went carefully through the evidence, arguing that the Judge selected matters to support his theory of a work-shy appellant, and ignored much which might reasonably have been taken as supporting his case.
9. Mr Diwyncz submitted along the lines of the rule 24 response, but in my view that is clearly a re-trial of the case as it might be taken at first instance, not an analysis by which the decision reached could be supported.
10. The case might have gone either way, on resolution of the points made on both sides; but the tribunal's decision was not an adequate resolution of the evidence and submissions placed before it. It is unnecessary, and would probably be unhelpful, to go further into those respective cases at this stage.
11. The decision of the FtT is **set aside**. The case is **remitted** for a fresh hearing by another Judge.
12. No anonymity order has been requested or made.

Hugh Macleman

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
8 December 2023