



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

Appeal Number: EA/01404/2021
UI-2021-001116

THE IMMIGRATION ACTS

**Heard at Field House, London
On Wednesday 13 April 2022**

**Decision & Reasons Promulgated
On Wednesday 8 June 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR MD ABDULLAH AL MAMUN

Appellant

-and-

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms A Jones, Counsel instructed by Brit solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge C Griffith promulgated on 9 September 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 7 January 2021, refusing him a family permit under the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”) to join his father-in-law in the UK. Although the EEA Regulations have been repealed, these appeals proceed in accordance with transitional arrangements.

2. The Appellant is a national of and resident in Bangladesh. His father-in-law, Mr Jahangir Alam (hereafter “the Sponsor”), is an Italian citizen exercising Treaty rights in the UK. The Appellant’s wife (the Sponsor’s daughter) and the Sponsor’s wife have also made applications to join the Sponsor but decisions on those applications are said still to be pending.
3. The Respondent accepted the Sponsor’s nationality and that the Appellant is related as claimed to him. It was not accepted that the Appellant was financially dependent on the Sponsor.
4. The Judge accepted that the Sponsor had been sending money to the Appellant, the Appellant’s wife and the Sponsor’s wife ([22] of the Decision). The Judge did not accept however that this evidence was enough to establish dependency. The Judge concluded that there was insufficient evidence to reach a finding that the Appellant was dependent on the Sponsor as claimed.
5. Ms Jones helpfully summarised the issues raised by the grounds of appeal as follows:
 - (1)The Judge failed to reach any credibility finding in relation to the Sponsor’s evidence.
 - (2)The Judge wrongly applied a gloss to the statutory scheme by finding that documentary evidence was required in order to establish dependency.
6. Permission to appeal was granted by First-tier Tribunal Judge Mills on 1 December 2021 in the following terms so far as relevant:

“... 2. The grounds of appeal assert that the judge has erred in failing to make an express finding as to the credibility of the sponsor’s evidence. I find that the grounds do raise an arguable error of law.

3. It was accepted by the respondent that there was documentary evidence of regular remittances to the appellant, and the sole issue was whether he required that financial support to meet his essential daily needs. Given the sponsor’s evidence was that the appellant had no other sources of income then, had his evidence been accepted, the appeal should have fallen to be allowed.

4. It is notable in this respect that the Judge expressly states, at his paragraph 19, that ‘there were no credibility issues raised’. While this statement is somewhat ambiguous, I consider that it adds to the lack of clarity in the Judge’s decision as to why the appeal has been dismissed.

5. Permission to appeal is granted.”
7. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. I had before me the core documents relating to the appeal and the Appellant’s and Respondent’s bundles as before the First-tier Tribunal. However, given the nature of the challenge to the Decision I do not need to refer to those documents.

DISCUSSION

8. I begin with the point raised in the grant of permission to appeal concerning what is said at [19] of the Decision to which Ms Jones also drew my attention. The Judge there said this:

“The sole issue to be determined is whether the appellant is dependent upon the sponsor, an Italian national who has been exercising Treaty rights in the UK since 2013. The status of the sponsor is accepted, as is his relationship with the appellant, and there were no credibility issues raised.”
9. Although as was pointed out by Judge Mills when granting permission, the final sentence might be ambiguous, this sentence has to be read in context. The point made by Judge Griffiths is that the Sponsor’s status as an EEA national and his relationship with the Appellant were accepted as credible. The only issue was whether the Appellant is dependent on the Sponsor. It stands to reason that the Judge was not there saying that the Appellant’s assertion that this was the position was accepted as being credible. Had it been, then there would be no appeal.
10. I turn then to the first of the issues which Ms Jones identified. The Sponsor’s evidence is set out at [10] to [16] of the Decision. As Ms Ahmed pointed out, the Sponsor was cross-examined by the Respondent’s representative and the Judge herself asked some questions. It is therefore to be inferred that the Sponsor’s evidence was challenged at least in relation to the sole issue which the Judge had to decide.
11. In that regard, the Judge at [21] of the Decision said this:

“The appellant claims he became dependent on the sponsor upon his marriage to the sponsor’s daughter on 17 July 2020. The appellant’s affidavit – as are those of his wife and mother-in-law – is somewhat brief and rather thin on detail. Beyond stating that he did not have sufficient means and that he lives in a house belonging to the sponsor, he has provided nothing no additional information about his current domestic and financial circumstances. In his oral evidence the sponsor said that both the appellant and his wife are students but neither the appellant or his wife in her affidavit made any mention that they are in education.”
12. As Ms Ahmed submitted and I accept, this shows that the Judge was not prepared to take the Sponsor’s evidence at face value. The Sponsor asserted that the Appellant as his wife and the Appellant’s wife were dependent on him financially ([13] of the Decision) but the Judge was not required to accept that assertion without more as evidence, particularly given the lack of evidence from those whose needs lay at the heart of the appeal. Although the Judge did not state in terms that the Sponsor’s evidence about dependency was not credible, as Ms Ahmed submitted, this was in any event only one aspect of the evidence and had to be taken in the round whether accepted or not.
13. That then brings me on to the second issue concerning the lack of documentary evidence. The Judge’s findings in this regard leading to her dismissal of the appeal are at [26] of the Decision as follows:

“The evidence shows that regular payments have been made to the appellant since he became a member of the sponsor’s family and before that, the sponsor was sending money to his wife and daughter in Bangladesh, but that is not sufficient to establish dependency. Despite the respondent identifying what type of evidence was necessary for the appellant to submit in order to show dependency, no further evidence has been submitted. As **Moneke** made clear, dependency is not the same as mere receipt of some financial assistance from the sponsor. The failure on the part of the appellant to provide adequate information concerning his financial and domestic circumstances, beyond the generalities contained in his affidavit, means there is insufficient evidence for me to assess his social and financial situation to find on a balance of probabilities that in order to meet his essential needs he is dependent upon the money sent by the sponsor.”

14. The Appellant’s complaint in this regard is that the Judge placed a gloss on the test by requiring there to be documentary evidence. That is a misreading of this paragraph. The reference to the “type of evidence [that was] necessary” is simply a reference to the sorts of evidence which the Respondent had indicated would normally be expected to be produced in a case like this where an appellant bears the burden of showing that without the money provided by a sponsor his essential living needs are not met. For that reason, I do not need to deal with Ms Ahmed’s submission that case-law suggests that certain sorts of evidence are to be expected.
15. The Judge did not say that documentary evidence was needed. Her point was that more detailed evidence was required -whether by way of documents or written statements - to show what were the Appellant’s essential needs and how those were being met by the funds provided by the Sponsor. The Judge’s conclusion is that such evidence being lacking, she was unable to reach a conclusion to the standard of the balance of probabilities that the Appellant had made out his case. There is no gloss placed on the test as is evident from the final sentence of that paragraph. The Judge’s conclusion was open to her based on the (lack of detailed) evidence in this case.

CONCLUSION

16. For the foregoing reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision with the result that the Appellant’s appeal remains dismissed.

DECISION

The Decision of First-tier Tribunal Judge C Griffiths promulgated on 9 September 2021 does not involve the making of an error on a point of law. I therefore uphold the Decision with the consequence that the Appellant’s appeal remains dismissed.

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 14 April 2022