



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17714/2019

**THE IMMIGRATION ACTS**

Heard at Field House via MS Teams  
On 9 March 2022

Decision & Reasons Promulgated  
On 14 March 2022

**Before:**

**UPPER TRIBUNAL JUDGE GILL**

**Between**

**Mohammed Jiblu Khan  
(ANONYMITY ORDER NOT MADE)**

**Appellant**

**And**

**Entry Clearance Officer, UK Visas**

**Respondent**

**Representation:**

For the Appellant: Mr S Karim, of Counsel, instructed by Kalam Solicitors.

For the Respondent: Mr S. Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Bangladesh on 15 May 2001, appeals against a decision of Judge of the First-tier Tribunal P-J White (hereafter the “judge”) promulgated on 29 March 2021 following a hearing on 10 February 2021 (held via a video link) by which the judge dismissed his appeal on human rights grounds against a decision of the respondent of 3 October 2019 to refuse his application of 17 April 2019 (made a month before his 18<sup>th</sup> birthday) for entry clearance in order to join his mother, Thisunara Begum, a British citizen (hereafter the “sponsor”), under para 297 of the Immigration Rules. The decision also refused to grant leave to enter on human rights grounds (Article 8).

2. The respondent was not represented at the hearing before the judge. I mention this at this point because the grounds argue (inter alia) that the Surendran guidelines therefore applied and the judge ought to have put to the sponsor various matters that he was not satisfied about.
3. The appellant's case was (in summary) as follows: The sponsor was divorced from her husband. He was schizophrenic and could not care for their three sons. When the sponsor came to the United Kingdom in 2014, she left the appellant in the care of her cousin, Mr Aklus Miah. In her witness statement dated 20 August 2020 (AB/1), the sponsor said (para 2) that she had had sole responsibility for all of her children since being separated from her husband and had regularly supported them financially. There was no contact with the appellant's father. At the date of the hearing, the appellant was nearly 20. His two older brothers were about 24 and 22 (para 16 of the judge's decision).
4. The respondent was not satisfied that the sponsor had had sole responsibility for the appellant or that there were serious and compelling family or other considerations which made his exclusion from the United Kingdom undesirable (paras 297(i)(e) and (f) of the Immigration Rules). The respondent was also not satisfied that the appellant could be maintained adequately in the United Kingdom without recourse to public funds (para 297(v)). In addition, the respondent was satisfied that false representations had been knowingly made by the sponsor that were material to the appellant's application and therefore refused the application under para 320(7A) and para 297(vii) of the Immigration Rules.
5. In relation to the refusal under para 320(7A), the respondent relied upon "*multiple discrepancies*" in answers given by the appellant and her alleged employer to the same questions when both were interviewed by telephone.
6. The judge resolved the para 320(7A) and maintenance issues in the appellant's favour. At para 21, he said (in effect) that it was not suggested that there were serious and compelling family or other considerations that made the appellant's exclusion undesirable.
7. The issue before me is whether the judge materially erred in law in reaching his findings that the appellant had not shown that the sponsor had had sole responsibility for him and that, in relation to Article 8, the decision was proportionate.

#### The judge's decision

8. The judge gave his reasons for finding that the appellant had not shown that the sponsor had had sole responsibility for him at paras 10-20. He noted (at para 10) that the sponsor's witness statement said nothing about her relationship with the appellant and his siblings or their circumstances or the exercise of responsibility for them.
9. At para 11, the judge considered a letter from Professor Dr Gopal Dey dated 15 March 20219 which confirmed that the appellant's father had been under his care for chronic schizophrenia since January 2014 and that he needs support and care and is "*unfit to maintain his family matters*". The judge considered that the fact that the sponsor was able to produce the letter showed that she must remain in some sort of contact with the father. He considered that Prof Dey's letter left it "*quite unclear*" whether the father has maintained any involvement in the lives of his children or not.

10. At para 12, the judge considered an affidavit about the appellant's father from Mr Islam Uddin in which Mr Uddin said, inter alia, that he knows the appellant's father as suffering from chronic schizophrenia for a long time and that he could confirm that the appellant's father lacks the mental capacity to write any statement. The judge then said at para 12:
  - “12. ... **This affidavit is not capable of being tested. It is not accompanied by any identity document or other evidence of Mr Uddin's existence.** It does not suggest that he has any qualification or expertise entitling him to express the opinion he does, which is of some importance when Prof Dey does not say this and does say that there are periods of remission. I can attach no weight to this document.”

(my emphasis)
11. At para 13, the judge considered again the sponsor's oral evidence that she had not had contact with the appellant's father since separating from him. He noted that she was able to obtain a letter from his doctor when required in 2019, despite claiming to have had no contact by then for nearly 16 years. He said that he was therefore not satisfied that he had a full or accurate picture of the relationship that the sponsor or the appellant may have had with the appellant's father since the divorce.
12. At para 14, the judge considered the evidence relating to the appellant's address and where he had been living since 2014. He considered that the evidence was inconsistent, giving his reasons for reaching that view.
13. At para 15, the judge considered the affidavit from Mr Aklus Miah dated 12 August 2020, stating, inter alia, that he regarded the affidavit as “*wholly contrived and unconvincing.*”
14. At para 16, the judge noted the lack of evidence before him about the circumstances of the appellant and his siblings, as to their health and education and as to the appellant's current situation, whether he is studying, working or idle, or any plans he may have, all of which the judge observed being matters that might be expected to be covered in an application or appeal under para 297.
15. At para 17, the judge considered the evidence of contact between the sponsor and the appellant, drawing attention to the shortcomings in the evidence but stating that he did not doubt that the appellant and the sponsor were in reasonably regular contact. He also considered the evidence of the remittances by the sponsor at para 17, stating, inter alia, that once all of the duplicates are weeded out, there were two transfers in 2018 (in August and December), five in 2019 (in January, April twice, November and December) and seven between January and August 2020, that one of these, in April 2019, was to Aklus Miah and that the rest were to the appellant's elder brother. The judge considered that this was clearly some evidence of financial support to the family generally but that given its intermittent nature, it was unclear whether they have other means of support; that the evidence was also suggestive of some degree of responsibility for the appellant being taken by his older brother; and that the evidence was not particularly supportive of any major caring responsibility being borne by Mr. Aklus Miah.
16. The judge then said, at paras 18-20:
  - “18. In the light of the various inconsistencies and gaps in the evidence, as discussed above, I am not satisfied that I have a clear and accurate picture

of where, how or with whom the appellant has been living since [the sponsor's] departure in 2014.

19. The nature of sole responsibility, and the evidence required to show it, was explored by the Tribunal in TD (Paragraph 297(i)(e) "sole responsibility" Yemen [20061 UKAIT 00049, a decision which remains authoritative. It is always a matter of fact. ...
20. The appellant's statement of case cites TD and is clearly aware of the relevant law. In submissions [the appellant's representative] acknowledged its importance. **The refusal noted the need for evidence about involvement in the child's life and the making of decisions. I simply do not have any of that, even in the form of bare assertions in a witness statement.** It also noted the absence of evidence about his living with Mr Miah, but although it is clear that some adult, other than [the sponsor], has had day to day responsibility in Bangladesh, I have no evidence about the arrangements actually made. **The stance adopted in this appeal is effectively that [the appellant's father] has no involvement with his children and therefore [the sponsor] has sole responsibility. I am not satisfied that the premise is satisfactorily demonstrated, but even if it were the conclusion does not, as a matter of law, follow.** I accept that [the sponsor] has remained involved to some degree in her son's life but I am wholly unpersuaded that she has had sole responsibility, as that term is to be understood in this context, for him."

(my emphasis)

17. At paras 22-26, the judge considered the evidence in relation to the respondent's allegation that false representations had been employed by the sponsor. He concluded (at para 26) that the respondent had discharged the initial evidential burden of raising a case to answer. However, he found that, despite his reservations about the appellant's explanation for the fact that there was no common ground at all between the lists of other employees that she and her employer gave at their respective interviews, the respondent had not discharged the ultimate legal burden of proving dishonesty given the limited evidence from the respondent and the evidence the appellant had submitted from HMRC and the bank. He therefore did not uphold the refusal under para 320(7A) and he further accepted, on balance, that the sponsor was employed at the time and would have been able adequately to maintain the appellant."
18. The judge then considered Article 8 at paras 27-28, beginning by stating that his findings in relation to para 320(7A) and maintenance were of limited assistance. He concluded, for the reasons he gave at paras 27-28, that the decision was proportionate.

### Assessment

19. There are five grounds, numbered 1 to 5. Ground 1 concerns the sponsor's credibility and para 20 of the judge's decision. I have re-numbered ground 2 so that ground 2(a) concerns para 11 of the judge's decision and ground 2(b) concerns para 12. I have also re-numbered ground 3 so that ground 3(a) concerns para 15 of the judge's decision and ground 3(b) concerns para 17. Procedural unfairness is raised in grounds 1, 3(a) and 3(b). Ground 4 concerns para 28 of the judge's decision. Ground 5 concerns the judge's assessment of Article 8.

20. Paras 5 and 7 in respect of ground 2 and para 12 in respect of ground 4 give “examples” of the error of law alleged in the respective grounds 2 and 4. However, I informed Mr Karim at the hearing that the appellant must plead his case properly in his grounds and that, if he wishes to rely upon further “*examples*” at the hearing which ought to have been pleaded in the grounds, he would require permission. I record that Mr Karim did not go beyond the grounds.

*Ground 1 – the sponsor's credibility and para 20 of the judge's decision*

21. Ground 1 is as follows:

(i) The judge made inadequate findings in relation to the evidence of the sponsor. Contrary to MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC), there were no clear and properly reasoned findings of credibility with respect to the issues under para 297 with regards to sole responsibility, although the judge accepted, at least partially, the sponsor's credibility in relation to the deception allegation under para 320(7A).

(ii) The judge erred at para 20 of his decision when he said:

“The refusal noted the need for evidence about involvement in the child's life and the making of decisions. I simply do not have any of that, even in the form of bare assertions in a witness statement”.

The errors at para 20 were:

(a) Procedural unfairness, in that, the judge failed to ‘test’ the sponsor’s evidence/ask her about his concerns. The grounds rely upon the Surendran guidelines.

(b) As a consequence, the sponsor’s bare assertion at para 2 of the sponsor's witness statement (AB/1) went unchallenged. At para 2 of her witness statement, the sponsor had said:

“Since the separation with my former husband I have the sole responsibility of my all [sic] children in Bangladesh. I regularly support them financially and regularly sent [sic] money through money remittance”.

(c) The judge overlooked relevant “evidence”, in that, he overlooked paras 2(d) and (e) of the appellant’s grounds of appeal (hereafter the “GOA”) to the First-tier Tribunal (“FtT”). He also erred by failing to enquire about or ask any follow-up questions concerning paras 2(d)-(e) of the GOA. There was therefore procedural unfairness for this reason too.

Paras 2(d)-(e) of the GOA state:

“(d) In relation to the sole responsibility, the appellant submits that his mother is the sole responsible parent to look after his healthcare, welfare, religion, education and best interest [sic]. The appellant has submitted a letter from father’s consultant confirming that he has been suffering from schizophrenic [sic] and unable to care of him. This clearly confirms that he has ceased parental responsibility towards the appellant.

(e) The appellant further submits that as his father is the sole responsible parent of [sic] him, his healthcare, welfare, religion, education and best interest are looked after by his mother. While

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living in the UK, the sponsor regularly keeps in touch with the appellant via phone. The sponsor makes all important decisions with regards to the appellant's upbringing as a sole responsible parent."

22. I shall deal with these in reverse order. At the hearing, I put to Mr Karim that grounds of appeal are not evidence. Mr Karim submitted that grounds of appeal are prepared on instructions. He submitted that the judge had the sponsor's witness statement and the GOA which "*flushed out*" the appellant's case, para 2(e) of which stated that the sponsor makes all of the important decisions on the appellant's life.
23. In effect, therefore, Mr Karim was contending that the judge ought to have treated paras 2(d)-(e) of the GOA to all intents and purposes as if it constituted "*evidence*" before him. I have no hesitation in rejecting this submission. It is axiomatic that grounds of appeal are not evidence. The submission, in effect, that the judge ought to have treated paras 2(d)-(e) of the GOA to all intents and purposes as if it constituted "*evidence*" before him is not one that could properly have been made. Nothing more needs to be said in relation to the ground described at my para 21 (ii) (c) above.
24. I asked Mr Karim whether the bare assertions that the sponsor made at para 2 of her witness statement were sufficient to discharge the burden of proof upon the appellant to establish on the balance of probabilities that the sponsor had had sole responsibility for him. He responded: "*Why not? Unless they are challenged*". I drew attention to the fact that the respondent had put sole responsibility in issue in the decision letter. Mr Karim responded that the sponsor had subsequently stated that she was solely responsible for all of her children.
25. Again, I have no hesitation in rejecting Mr Karim's submission, in effect, that the sponsor's bare assertions at para 2 of her witness statement were effectively unchallenged simply because she had made those assertions subsequent to the decision letter and was not challenged about it at the hearing. In any event, a bare assertion that a sponsor has sole responsibility is plainly insufficient to discharge the burden of proof upon the appellant to establish that the sponsor had had sole responsibility for him.
26. The difficulty for Mr Karim is that there was simply no evidence before the judge of the sponsor's involvement in the appellant's life and the making of decisions by her in his life, as the judge said at para 20 of his decision.
27. The procedural unfairness aspect of ground 1 is hopeless. The grounds refer to the Surendran guidelines but make no mention of WN (Surendran; credibility; new evidence) Democratic Republic of Congo [2004] UKIAT 00213 in which the then President (Ouseley J) said, at para 43, that "*(t)he Appellant and his representative should have realised that they were all obvious points which required to be dealt with*".
28. Likewise, in the instant case, the decision letter put the appellant and his legal representatives on notice of the need for evidence of the sponsor's involvement in the appellant's life and the making of decisions by her in his life, as the judge said. The judge was therefore not obliged to put to the sponsor or ask her any questions to test her bare assertion at para 2 of her witness statement that she had had sole responsibility for her children after her separation from her husband.

29. In his submissions in closing, Mr Karim submitted that the judge had clearly overlooked the sponsor's assertion, bare or otherwise, at para 2 of her witness statement that she had had sole responsibility for the appellant. This submission is based on a misreading of the relevant part of para 20 of the judge's decision. The "bare assertions" that the judge was referring to at para 20 were in relation to involvement in the appellant's life and the making of decisions. It is a fact that para 2 of the sponsor's witness statement did not make any assertions about her involvement in the appellant's life and the making by her of decisions in his life. Accordingly, it is not the case that the judge overlooked relevant evidence.
30. The sponsor's bare assertion at para 2 of her witness statement provided no evidence at all of her involvement in the appellant's life. She provided no detail at all about any involvement on her part in the appellant's life or of having made any decisions in the appellant's life, let alone important decisions.
31. Plainly, this was a poorly prepared case on the part of the appellant and his legal representatives. In effect, the procedural unfairness aspect of ground 1 seeks to shift to the judge the responsibility on the appellant to establish his case.
32. The judge was plainly aware of the sponsor's witness statement. He specifically stated, at paras 6 and 9 of his decision, that he had considered all of the evidence and taken everything into account. Importantly, in the context of this ground, he specifically referred to the sponsor's witness statement at para 10 of his decision, where he said that she had stated that, since her separation from her husband, she had sole responsibility for all of the children and regularly sends money to support them.
33. The remaining ground in ground 1, described at para 21(i) above, ignores paras 13 and 14 of the judge's decision from which it is clear that he did not find her evidence about the appellant's circumstances in Bangladesh credible and paras 11 and 13 from which it is clear that he did not accept that there was no contact with the sponsor's husband, albeit that he did not say so in terms that he did not find her lacking in credibility. In any event, given the total absence of any evidence before the judge of the sponsor's involvement in the appellant's life and of any decisions that the sponsor had made in his life, the outcome could not have been any different, on any reasonable view.
34. For all of the reasons given above, ground 1 is not established.

*Ground 2(a) - para 11 of the judge's decision*

35. This ground is as follows: The judge made inadequate findings in relation to the evidence of Professor Dr Gopal Dey which he considered at para 11, in that, he failed to make findings as to what weight is to be attached to Prof Dey's letter and give any reasons for accepting/rejecting this evidence, contrary to MK (duty to give reasons) Pakistan.
36. Para 11 of the judge's decision reads:
  - "11. I have a letter from Professor Dr Gopal Dey, dated 15th March 2019, which says that [the appellant's father] has been under his care for chronic schizophrenia since January 2014. He suffers hallucinations and is occasionally violent. He has frequent relapses and short remissions. He is

on various medications, needs support and care and is "unfit to maintain his family matters". **It may well be the case that this letter was obtained for the purposes of this application but I cannot agree with the ECO's inference that it is therefore self-serving and somehow unreliable.** It does suggest that [the sponsor] must remain in some sort of contact, because she was able to only to locate his doctor when evidence was needed but persuade that doctor to provide a letter about his patient. I [*sic*] suggests that [the appellant's father] is unlikely to be able effectively to exercise any responsibility for his children. It leaves it quite unclear whether he has maintained any involvement in their lives or not."

(my emphasis)

37. In my judgment, whilst Prof Dey's letter constituted evidence in support of the sponsor's evidence that her husband had no responsibility for the appellant because he suffered from schizophrenia, it is clear from the judge's reasoning in the final two sentences of para 11 that he found the letter to be of very limited assistance. He said that it suggested that the appellant's father was unlikely to be able effectively to exercise any responsibility for his children but that it left "*quite unclear*" whether he has maintained any involvement in their lives or not.
38. In addition, the judge's assessment of Prof Dey's letter needs to be read in conjunction with the fact that the judge said, at para 20, that:
- "20. ... The stance adopted in this appeal is effectively that [the appellant's father] has no involvement with his children and therefore [the sponsor] has sole responsibility...."
39. Given the judge's reasoning in the final two sentences of para 11 and his reasoning in the sentence I have quoted from para 20 of his decision, his failure to indicate in terms the weight he gave to Prof Dey's letter did not amount to an error of law.
40. The submission that the judge gave no reasons for accepting/rejecting Prof Dey's letter proceeds on the basis that the judge erred in failing to state whether he accepted or rejected the letter. However, this is based on a simplistic view that an outright acceptance or rejection of the letter was material to the outcome. That is simply not the case given that Prof Dey's letter did not contain any evidence of the sponsor's involvement in the appellant's life and any decisions that she may have made in his life.
41. In the circumstances of the instant case, this piece of documentary evidence called for a nuanced assessment, i.e. to what extent did it assist the judge to reach a finding on the central factual issue as to sole responsibility. That is exactly the approach that the judge took, by considering the extent to which the letter supported the sponsor's evidence that the medical condition of the appellant's father meant that he was not able to exercise responsibility for his children effectively and the extent to which it assisted him (the judge) to decide whether the father had maintained any involvement in the lives of his children.
42. Ground 2(a) is therefore not established.

*Ground 2 (b) - para 12 of the judge's decision*

43. This ground concerns the following sentences in para 12 of the judge's decision where the judge considered the affidavit of Mr Islam Uddin:



“12. This affidavit is not capable of being tested. It is not accompanied by any identity document or other evidence of Mr Uddin's existence.”

44. This ground is as follows: The judge erred in stating the above, in that, he adopted an irrational approach/reached irrational conclusions. This is because the judge ignored the following: (i) that the photograph of the person was affixed to the affidavit, (ii) his address and, more importantly, his national ID number were stated on the affidavit; and (iii) that the affidavit was sworn before an advocate. The judge erred “*by failing to grapple with these features and rejected the affidavit without due consideration and sufficient reasoning*”.
45. It can therefore be seen from my para 44 above that this ground alleges various errors of law: irrational approach, irrational conclusions, failure to take into account certain evidence, and insufficient reasoning.
46. Judges are not obliged to isolate every aspect of the evidence before them. The judge was correct to say that the document was not *accompanied by* any identity document. It does not mean that he was not aware that a national identity number was given for Mr Uddin in the body of the document.
47. In any event, this ground ignores the fact that the judge said (correctly) that the affidavit was not capable of being tested and importantly, that the affidavit does not suggest that Mr Uddin had any qualification or expertise entitling him to express the opinion that the appellant's father lacked the mental capacity to write any statement, as the judge said, given that Prof Dey did not say so.
48. I do not accept that the judge adopted an irrational approach or reached irrational conclusions. I do not accept that he gave inadequate reasons at para 12 of his decision in assessing the affidavit of Mr Uddin. I do not accept that he materially erred in law by failing to state, in terms, that he had taken into account the fact a photograph was affixed to the affidavit, that a national identity number for Mr Uddin was given in the affidavit and that the document was allegedly sworn before an advocate. The reasons that the judge gave at para 12 which I have summarised at my para 47 above were adequate and determinative of the affidavit of Mr Uddin, whatever may be said about his observation that the affidavit was not accompanied by any identity document or other evidence of Mr Uddin's existence.
49. For the reasons given above, ground 2(b) is not established.

*Ground 3(a) - para 15 of the judge's decision*

50. This ground concerns the sentences in para 15 of the judge's decision that are emboldened below:

“15. I have an affidavit from Aklus Miah dated 12th August 2020. This says that he is a businessman, he needs to concern himself with his business, and he cannot therefore look after the appellant. His family are also busy and he has no spare accommodation. By the time this affidavit was sworn the appellant was 19 and not in obvious need of the sort of care which would interfere with Mr Miah's business. **I regard this document as wholly contrived and unconvincing. I note that Mr Miah says nothing about his relationship, if any, with the appellant, or about the circumstances in which he assumed any care of the appellant, or the exercise of**

**responsibility for the appellant while living with him, or where and how the appellant is currently living.”**

(my emphasis)

51. Ground 3(a) contends that the judge’s concerns about the absence of information does not mean that the document was contrived.
52. Ground 3(a) contends that the judge erred as follows:
- (i) He failed to explain how he had reached the conclusion that the affidavit was contrived.
  - (ii) He failed to have regard to the guidance in R (SS) v SSHD (“self-serving statements) [2017] UKUT 164 (IAC), which states:
 

The expression "self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing. What is needed is a reason, however brief, for that designation. For example, a letter written by a third party to an applicant for international protection may be "self-serving" because it bears the hallmarks of being written to order, in circumstances where the applicant's case is that the letter was a spontaneous warning.

Although the judge did not use the term “*self-serving*”, his conclusion that the affidavit was contrived was the same thing in effect, in the present context.
  - (iii) There was also procedural unfairness for two reasons:
    - (a) it was procedurally unfair to penalise the appellant matters he is not responsible for, i.e., the absence of information in the affidavit; and
    - (b) the judge did not indicate that he had put these matters to the sponsor for comment.
53. The submission that “*contrived*” in the context of the instant case has the same meaning as “*self-serving*” ignores the fact that the judge said, at para 11 of his decision, that he could not agree with the respondent's inference that the letter from Prof Dey was obtained for the purposes of this application and therefore self-serving and somehow unreliable. This makes it plain that the judge was aware that the mere fact that a document has been obtained for the purposes of an appeal does not mean that it is unreliable.
54. Given these observations at para 11 of the judge's decision, his use of the word “*contrived*” at para 15 has to be considered in the context of his reasoning at para 15. The judge referred to Mr Miah’s evidence that he is a businessman, that he needs to concern himself with his business, that he cannot therefore look after the appellant and that his family are also busy. The judge then said that the appellant was 19 years old at the time of the affidavit and therefore not in obvious need of the sort of care which would interfere with Mr Miah's business. Seen in that context, the judge was plainly saying that the evidence of Mr Miah was concocted or invented. There is no justification for the assertion in ground 3(a) that “*contrived*” at para 15 meant “*self-serving*”. This ground is therefore misconceived.
55. The submission in the grounds (para 51 above), that the judge’s concerns about the absence of information does not mean that the document was contrived, makes no sense. This is because the judge's reasons for finding that the affidavit of Mr Miah

was contrived were contained in the *first part* of para 15, as I have explained in the preceding paragraph, and not in the second part of para 15 (emboldened above).

56. For the reasons given at para 54 above, there is no substance at all in the assertion that the judge failed to explain how he had reached the conclusion that the affidavit was contrived. He did explain it. His reasons were in the first part of para 15.
57. There is no question of the judge penalising the appellant. He was simply assessing the evidence before him in order to reach his finding as to whether or not appellant had discharged the burden of proof upon him to establish that the sponsor had had sole responsibility for him.
58. The submission that the judge should have put to the sponsor the matters that he considered in the final two sentences (emboldened) in para 15 of the judge's decision ignores the fact that the appellant and his legal representatives knew that sole responsibility was in issue; and that it was the sponsor's evidence that she had left the appellant in the case of Mr Miah whilst retaining sole responsibility for him. The appellant and his legal representatives were on full notice that these issues had to be dealt with.
59. The procedural unfairness ground is therefore wholly lacking in substance. Again, it amounts to no more than an attempt to shift to the judge the burden that was on the appellant and his legal representatives to establish sole responsibility.
60. Ground 3(a) is therefore not established.

*Ground 3(b) - para 17 of the judge's decision*

61. This ground is that the judge erred at para 17 of his decision where he raised concerns about the remittances stating that they are intermittent and that it was unclear whether there are other means of support, as follows:
  - i) He erred in focusing on the frequency of the remittances. He ought to have considered the amounts being sent. The grounds contend that "*material amounts were being sent, as is clear*".
  - ii) He ought to have raised concerns about whether there are other means of support, at the hearing, so that it could be addressed. Thus, there has been procedural unfairness.
62. The procedural unfairness ground is wholly devoid of substance for the reasons I have already given in relation to the other grounds above. The same reasoning applies in relation to ground 3(b).
63. Likewise, there is no substance in the remainder of ground 3(b) which simply ignores the judge's reasoning at para 17 where he said:
 

"17. ... Finally I have evidence of money transfers. The bundle contains some duplication but once the duplicates are weeded out there are two transfers in 2018, in August and December, 5 in 2019, in January, April twice, November and December and 7 between January and August 2020. Only one of these, in April 2019, is to Aklus Miah. The rest are to [the sponsor's] second son and the appellant's elder brother. This is clearly some evidence of financial support to the family generally, although given the intermittent nature of the remittances it is unclear whether they have other means of

support. It is also suggestive of some degree of responsibility for the appellant being taken by his older brother. It is not particularly supportive of any major caring responsibility being borne by Aklus Miah.”

64. At the hearing, Mr Karim drew my attention to the remittances at AB/15, AB/16 and AB/17. However, the fact is that the judge said that, once the duplicates were weeded out, there was only one remittance to Mr Aklus Miah, i.e. in April 2019 (AB/11). This was an important point, given the sponsor's evidence that she left the appellant in the care of Mr Aklus Miah.
65. Furthermore, it is plain that the judge did take into account the remainder of the remittances, given that he said that “... *the rest [of the remittances] are to [the sponsor's] second son and the appellant's elder brother. This is clearly some evidence of financial support to the family generally,...*”
66. There is no reason to think that the judge failed to take into account the amount of money that was sent on each occasion, given that he said at paras 6 and 9 that he had taken all of the evidence into account.
67. Ground 3(b) is therefore not established.

#### *Grounds 4 and 5*

68. Grounds 4 and 5 relate to the judge's assessment of the appellant's Article 8 claim, at paras 27-28 which read:
- “27. That finding is of limited assistance because the appellant fails, on other grounds, to satisfy the relevant rule. That failure is not the end of the matter, because the ground of appeal is breach of human rights. It is, however, always an important factor to bear in mind. In this case I accept that family life exists between the appellant and his mother. That family life has been exercised since 2014 by indirect contact (and possibly some visits, although I do not have evidence about that. The decision does not prevent the continuation of that family life. It does hinder the development of a closer relationship, which could be expected were the appellant admitted to live with his mother. Accepting that this is sufficient to engage Article 8, the decision is awful and in pursuit of a legitimate aim and the issue is proportionality. In assessing that, and bearing in mind that the appellant is now an adult so that the duty under s55 to consider best interests does not arise, I must have regard, so far as relevant, to the matters outlined in s117B of the 2002 Act. That reminds me that the maintenance of immigration control is in the public interest. This appellant does not satisfy the immigration rules. It is in the public interest that those seeking settlement be financially self-sufficient and speak English. I have found that the appellant could be adequately maintained, but that means only the absence of a potentially adverse factor. I have no from evidence of any ability in English - at the time of the application he was exempt from the English language requirement because he was under 18 and he asked, if interviewed, to be interviewed in Bengali.
28. More generally, I have, as already noted, no evidence about the appellant's current circumstances in Bangladesh. **It seems likely that he enjoys family life with one if not both of his older brothers, and that would be significantly disrupted by a move to the United Kingdom.** Any contact with his father, or his extended family, would similarly be disrupted. **His private life is entirely established in Bangladesh, and though I have no**

**details of that private life it is likely, by this age, to be extensive and important to him.** There is no suggestion of any specific issue, of health *[sic]* education or otherwise, making his case exceptional in some way or showing why, despite not meeting the rules, it would be disproportionate to exclude him. I am in no doubt that the decision made is, in all the circumstances, proportionate, that there is no breach of Article 8 and that this appeal must fail."

(my emphasis)

#### *Ground 4 - para 28 of the judge's decision*

69. Ground 4 is that the judge erred by speculating at para 28 where he said, in the absence of any evidence, that family life with the appellant's two brothers would be significantly disrupted and that the appellant had an "extensive" private life which would be "important" to him.
70. It may well be that the judge may have ventured into speculation when he said that the appellant's family life with his two brothers would be significantly disrupted and that he (the appellant) had an "extensive" private life which would be "important" to him.
71. However, I am satisfied that, on any reasonable view, this error (if made) was not material to the outcome. Given that I have rejected grounds 1, 2(a), 2(b), 3(a) and 3(b), it follows that the judge did not err in law in reaching his finding that the appellant had not established that the sponsor had had sole responsibility for him. It follows that he did not meet the requirements of the Immigration Rules.
72. It therefore also follows that the appellant's Article 8 claim could only succeed if his circumstances were such that they outweighed the public interest despite the fact that he did not meet the requirements of the Immigration Rules so that the decision was disproportionate. In other words, using the language of para 3.2 of Appendix FM of the Immigration Rules, that there were exceptional circumstances which would render refusal of entry clearance a breach of Article 8 because such refusal would result in unjustifiably harsh consequences for the appellant and/or anyone affected by the decision.
73. It is plain, when the judge's reasoning at paras 27 and 28 is considered, that there was simply nothing in the appellant's case that went anywhere close to rendering the decision disproportionate, on any reasonable view.
74. Ground 4 therefore does not establish any material error of law.

#### *Ground 5 - the Article 8 assessment*

75. Ground 5 is that the judge erred in his assessment of Article 8 as follows:
- (i) His assessment was inadequate.
  - (ii) He failed to carry out a balancing assessment. In this regard, the grounds refer to para [83] of Hesham Ali (Iraq) v SSHD [2016] UKSC 60 which states:
 

"83. One way of structuring such a judgment would be to follow what has become known as the "balance sheet" approach. After the judge has found the facts, the judge would set out each of the "pros\*" and "cons" in what has been described as a "balance

sheet" and then set out reasoned conclusions as to whether the countervailing factors outweigh the importance attached to the public interest in the deportation of foreign offenders.”

76. There is no substance in the assertion that the judge's assessment of Article 8 was inadequate. This submission simply ignores the judge's reasoning at paras 27 and (omitting any speculative aspects which I have dealt with in relation to ground 4) para 28.
77. The mere fact that a judge has not adopted the balance sheet approach does not mean that he or she has erred in law. There is no authority to that effect.
78. Ground 5 is therefore not established.
79. For all of the reasons given above, I dismiss this appeal.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside. The appellant's appeal to the Upper Tribunal is dismissed.

Signed  
Upper Tribunal Judge Gill

Date: 14 March 2022

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email