



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Numbers: UI-2023-005125
UI-2023-005126

First-Tier : EU/50585/2023; LE/00801/2023
EU/50589/2023; LE/00802/2023

THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated
On 15th March 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR RAHIM ALI
MRS SAHEDA BEGUM**

Appellants

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr K West, Counsel instructed by Commonwealth Solicitors

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 5 March 2024

DECISION AND REASONS

1. In an error of law decision promulgated on 25 January 2024, the Upper Tribunal found an error of law in the decision of First-tier Tribunal Judge Chana (promulgated on 12 October 2023) to dismiss the appellants' appeals. The appellants, citizens of Bangladesh had appealed to the First-tier Tribunal against a decision of the respondent, to refuse their applications for family permits under the EU Settlement Scheme ('EUSS'). The error of law decision is appended to this decision.

Background

2. The background to this appeal is set out in the papers in the electronic file and specifically the electronic bundles lodged by the appellants. The appellants are the mother and father of Ms Ayesha Akter Sumona, also a Bangladeshi national. Ms Sumona is married to Mr Iqbal Miah Ali, a Spanish national, that marriage having taken place on 20 November 2020.

HEARING

3. The only issue in dispute before me was whether the appellants are dependant on their daughter and her husband. It was not disputed that the appellants are the family members of a relevant EEA citizen. I have considered that the relevant date is the date of application, 26 September 2022.

Evidence and submissions

4. Mr Ali (whom I shall refer to in this decision as 'the sponsor') gave evidence with the assistance of a Sylheti interpreter and I ensured they understood each other. The sponsor was cross-examined. Both representatives made submissions. I reserved my decision.

LEGAL FRAMEWORK

5. Annex 1 of Appendix EU (FP) sets out that a dependent parent must be dependent on the relevant EEA citizen (the sponsor) at the date of application. To succeed on the facts asserted, the appellants must show that they were, at the date of application (26 September 2022), the family members of a relevant EEA citizen, being dependent parents of their daughter and/or her spouse in accordance with FP6 (1) of Appendix EU (FP). The standard of proof is the balance of probabilities.
6. Dependent is defined in Annex 1 of Appendix EU (FP) in this context as follows:

'dependent' means here that:

- (a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner; and
- (b) such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) or by their spouse or civil partner; and
- (c) there is no need to determine the reasons for that dependence or for the recourse to that support.

FINDINGS AND REASONS

Facts in dispute

7. In the refusals of entry clearance, the respondent asserted that the appellants had not provided adequate evidence to show that they were dependent on a relevant EEA or Swiss citizen, or their spouse or civil partner, with the respondent noting that as evidence of dependency the appellants had provided a money transfer receipt dated 10 October 2022 and a bank statement for the first appellant. Although these statements showed regular income into the account, the respondent asserted that the deposits did not reference the appellants' sponsor as the source of the funds. The respondent was not satisfied that any funds sent by the sponsor could be accredited to meeting the appellants' essential living needs.
8. The respondent noted that the sponsor (Mr Ali) arrived in the UK on 12 November 2018 and that the appellants had provided evidence that the sponsor's spouse, their daughter, arrived in the UK on 20 November 2021. However, the respondent asserted that a money transfer receipt within one month of the application, dated immediately after the application was provided, did not in isolation prove financial dependence. It was also noted that money transfer receipts from their sponsor to their daughter were provided, but with no evidence that the appellants and their daughter resided together during this period. The respondent was therefore unable to determine whether the appellants could meet their essential living needs without financial or other material support from their relevant EEA Citizen sponsor or their spouse. The respondent would expect to see evidence which fully details the appellants and their family's circumstances, their income, expenditure and financial position. The respondent was not satisfied that the appellants were dependent on a relevant EEA citizen or their spouse.
9. In the respondent's review it was noted that the appellants had provided money transfers in the appellants' names showing that they had been receiving funds from the sponsor for 1 year and 2 months. However, the respondent maintained that this evidence on its own

was limited and insufficient to demonstrate dependency. The respondent noted that the appellants had also provided money transfer evidence showing their daughter receiving funds from the sponsor for 11 months but continued to rely on the entry clearance refusal reasoning that there was no evidence to support the claim that their daughter was living with the appellants during this time or that the appellants benefited from this money. The respondent considered the witness statements from the appellants' daughter to be self-serving and asserted that there was no evidence of the appellants' own domestic circumstances, such as utility bills, mortgage/rent payment evidence. The respondent was not satisfied that the appellants cannot meet their essential living needs, in whole or in part, without the financial or other material support of the relevant EEA citizen or of their spouse/civil partner.

10. I have considered the documentary and oral evidence before me, together with the relevant law and jurisprudence and I am satisfied that the appellants have established that they were dependent on the sponsor at the date of application (and currently) for the following reasons.
11. I accept on balance the sponsor's written and oral evidence, which I found to be generally straightforward and reliable, that the first appellant, who was 62 at the relevant date, no longer works, having stopped during the pandemic (including due to unavailability of work at that time with the sponsor referring to the appellants' lease being withdrawn) and that he has not returned due to age and medical conditions. I further accept on balance, having had regard to the appellants' financial and social conditions (including their age and health) that the appellants have no other source of income.
12. Although I take into account in the round that the appellants did not provide any additional medical evidence in relation to the first appellant's medical conditions, I accept that the appellants had provided their prescription list and that it has always been their consistent case that part of their outgoings were for medicine. Considered in the round, including the age of the first appellant, I accept on balance that the first appellant did not return to work following the pandemic.
13. I note that there was evidence in the record before Judge Chana in the First-tier Tribunal in relation to the culture in Bangladesh and that normally the responsibility for parents falls on the son. I take into account that it was the consistent evidence of the sponsor and his wife, who gave evidence before the First-tier Tribunal, that her brother had left their parents in 2019 and did not support them. The sponsor told me that he thought 'it is because he could not even look after himself and did not want the responsibility of his parents'. Whilst I accept on balance the submission that this may not be the

cultural norm, I take into account that the generally very consistent oral and documentary evidence, including the transfers and bank statements, supports a finding that the sponsor has been the main, if not the sole financial provider for the appellants (and previously his wife before she moved to the UK) since 2020.

14. Although the respondent in the refusal and at the appeal hearing before me, pointed to the alleged limitation of there not being a 'long history' of the sponsor sending money to the appellants, I do not consider this to be an accurate characterisation of the evidence before the Tribunal. I had the benefit of an updated bundle of evidence and a 'transfer schedule' setting out what financial transfers had been made, on what dates, from Mr Ali (and on occasion his wife Ayesha Akter Sumona). This schedule was cross referenced to the relevant pages in the bundles of evidence before the Tribunal and it was not disputed, and I accept, that the transfer schedule was an accurate record of the evidence before me.
15. The sponsor and his wife (the appellants' daughter) married on 20 November 2020 (again such is not disputed) and it was the consistent documentary and oral evidence before me that the sponsor began financially supporting his new wife and her family, with four financial transfers (ranging from £48 to £300) in 2020. The transfer schedule and corresponding entries in the appellant's bundle shows a further sixteen transfers from the sponsor to his wife over the course of 2021 (ranging from £10 to £200). I accept on balance the consistent evidence that this money was for the support of the sponsor's wife and also her parents over the course of the end of 2020 and through 2021.
16. It was the consistent evidence, which I accept, that the sponsor's wife, the appellants' daughter, joined her husband in November 2021. The transfer schedule and corresponding money transfers show that from 2022 onwards the recipient of money transfers changed and the sponsor (and his wife) transferred money to the appellants (primarily the second appellant) with twelve transfers over the course of 2022, again with a range of amounts from £21.75 to £221.58.
17. I have also taken into account in the round, that the appellants have provided their bank statements and again it was not disputed before me that these show the transfers from the sponsor.
18. At the relevant date, the date of application, 26 September 2022, I accept the consistent documentary and oral evidence which establishes on balance that the sponsor had been financially supporting the appellants (and previously his wife), for almost 2 years. In addition, although after the relevant date, the appellants

have provided consistent evidence of continuing financial transfers from the sponsor in 2022-2023 and in early 2024.

19. Although the respondent in the refusal of entry clearance, pointed to the fact that the sponsor had entered the UK in November 2018, I take into account that the sponsor did not marry the appellants' parents until 2020, at which point he began sending remittances to his wife, which I accept on balance were for both her and her parents.
20. Whilst the presenting officer pointed to an entry in the appellants' bank statement which appeared to be a large cash deposit in May 2023 I note this is after the relevant date. In any event, I accept on balance the sponsor's oral evidence that this was transferred via a different method 'Bksh' which he described as a 'cash deposit pin number'. He explained that sometimes he used this method if the exchange rate was better. He told the Tribunal that the 21 May 2023 transfer by 'Bksh' was not actually for the appellants, but that he had transferred it via the appellants, his in-laws, to pay for a 'special religious occasion' to commemorate the anniversary of his mother's death.
21. I have considered in the round that there was no reference to this transfer by a different method previously. However, I take into account both that it occurred after the relevant date for the purposes of the appeal before me (which might help explain why the appellants may not have considered it necessary to provide a full explanation), and that in my findings the bank statement entries, which show an even larger amount being withdrawn the following day, support the sponsor's explanation that this money was not for the appellants but to pay for the religious commemoration of the anniversary of his mother's death.
22. I also take into account that the appellants have provided a written schedule of their essential needs for this hearing (and the additional evidence was admitted to the appeal by consent). This indicated that the total average monthly income from the sponsor was approximately £60-70 and although the presenting officer pointed to the sometimes small amounts, less than this average, transferred from the sponsor, I draw no adverse inference, including that the evidence shows other transfers significantly in excess of £70. That is of course the nature of an average, and I accept that whilst there may have been short periods (for example May to June 2023) when there were no transfers (and again this is after the relevant date) in March and April 2023, 6 transfers totalling over £200 were made.
23. I find that the irregular but still continual and ongoing level of support to be consistent with the overall circumstances, including that these transfers are not being made, for example, by a company (which

might be expected to be the same each month) but by a family member.

24. Although submissions were also made in relation to the sponsor's relatively low level of income, again, whilst this may be the case, the consistent documentary and oral evidence supports a finding that he has nevertheless managed, over a period spanning a number of years, to put aside an amount for his in-laws each month. I find this to be the case.
25. In terms of the schedule of income and expenditure provided, the appellants set out that they do not have any housing costs and that they spend approximately £10 on bills and £20 on medicine with £30 on food. Although submissions were made in respect of the lack of objective evidence in relation to the appellants' actual expenditure, I accept the consistent evidence, that the appellants are poor and live in a village in Bangladesh where they do not generally obtain receipts, with shop owners in the Bazaar holding ledgers of transactions. I take into account in the round that the appellants have provided a number of extracts from these ledgers with translations, showing the appellants purchasing household items as well as providing prescriptions for medications and an electricity bill.
26. Whilst I take into account that this may not provide an exhaustive independent breakdown of all of the appellants' expenditure in Bangladesh, such is not required in my findings, including given the standard of proof. On the balance of probabilities I am satisfied that the totality of the documentary and oral evidence provides a consistent picture of the appellants' (approximate) outgoings. I am satisfied on balance that they are as claimed. I am further satisfied that the appellants' require financial support for their essential needs.
27. I take into account that the definition of dependency is arguably broader than just solely financial dependency. I also take into account that the definition requires such dependency to be 'in whole or in part'. I take into account that the definition in the EU Settlement scheme is intended to reflect the jurisprudence. This includes that there is no need to determine the reason for the dependency and choice is not relevant and the question is whether, as a matter of fact, the claimed dependents were not in a position to support themselves.
28. Drawing all the evidence together, I am satisfied on balance that the appellants are dependent in whole or in part on the sponsor (and his wife, their daughter) and were so dependent at the date of application in September 2022 (and significantly before and after that date in my findings) for their essential needs.

29. I am satisfied that the appellants cannot meet their essential living needs without the material support of the sponsor. They are therefore dependent upon the sponsor within the definition in Annex 1.

Application of the law to the facts

30. As I have found that the appellants have established that they were dependent on the sponsor at the date of application, I am satisfied that they meet the requirements for leave under Appendix EU (Family Permit).

Notice of Decision

The appeals are allowed

The decision of the First-tier Tribunal contains an error of law and was set aside. I remake that decision allowing the appellants' appeals.

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeals and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because the appeal was allowed on the basis of the documentary and oral evidence presented for the appeal.

Signed M M Hutchinson

Dated: 15 March 2024

Deputy Upper Tribunal Judge Hutchinson

APPENDIX



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2023-005125
UI-2023-005126

First-tier Tribunal Nos: EU/50585/2023
EU/50589/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR RAHIM ALI
MRS SAHEDA BEGUM
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr K West, Counsel instructed by Commonwealth Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 10 January 2024

DECISION AND REASONS

Introduction

1. The appellants are citizens of Bangladesh born on 10 June 1960 and 18 May 1971 respectively and are husband and wife. The appellants made applications on 26 September 2022 to the respondent for family permits to join their family members in the UK pursuant to the EU Settlement Scheme ('EUSS'), such applications being refused by the respondent on 4 January 2023. The appellants' appeals against those

decisions were dismissed by First-tier Tribunal Judge Chana on 12 October 2023 following a hearing on 8 September 2023.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Boyes on the basis that it was arguable that the First-tier Tribunal Judge (“the judge”) had erred for the reasons set out in the grounds of appeal.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law and if so, whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions by Mr West, it is argued in short summary, for the appellants as follows.
5. Ground 1, which Mr West indicated was perhaps the strongest ground, asserted that the judge had misdirected herself in stating that it was necessary to demonstrate by evidence what the essential needs of the appellants were. The judge had correctly indicated that to be dependent it must be shown that without the support of the EEA national sponsor, an applicant could not meet his or her essential needs.
6. It was asserted that the judge appeared to require a detailed breakdown of every penny the appellants spend, backed in all cases by receipts, in order to demonstrate dependency and thereby misdirected herself, with such evidence if provided showing only what the appellants actually spend as opposed to whether or not they are dependent on the sponsor for that money. It was argued that the judge failed to engage with the core of the appellants’ claim, that the sponsor sends them regular funds and that they have no other income or savings. It was not in dispute that the sponsor sends the appellants funds and since it was argued that their essential needs, for instance for food and clothing, are being met, on the balance of probabilities the essential needs must be met from those funds either in whole or in part. It was argued that the judge erred in focusing exactly on what the spend was on each item.
7. The judge at [37] found that remittance receipts did not give a sufficiently comprehensive picture of the appellants’ overall essential living needs which it was submitted demonstrates the judge’s failure to understand and address the core element of the appellants’ case.
8. Mr West argued that the judge was stating at [30] that Appendix EU contained a requirement of what the essential living needs were, which was flawed. Whereas Mr West conceded that with regard to [31] (and paragraph 4.1 of the grounds) there will be an element where living conditions might be subjective, at [32] the judge made a finding that it was “entirely unclear” what the appellants’ appellants’ living needs were. It was argued that the judge erroneously found at [32], that there was nothing in the sponsor’s wife’s witness statement as to what her parents’ essential needs, whereas at paragraph 9 of her witness statement, the appellants’ daughter set out that her parents did not have any financial resources of their own and that without the funds of the sponsor they would have no ability ‘to buy food, clothing, medicines or other essentials’.

9. In relation to 4.2 of the grounds Mr West indicated that he could not take much issue with the judge's findings on receipts, other than to say that in an economy where things are paid for in cash there are unlikely to be receipts. However, at [36] in conjunction with [32] the judge appeared to have required a detailed breakdown of expenditure supported by receipts where there is no such requirement under EUSS and as noted in 4.2 of the grounds such if provided will show what is spent, not dependency.
10. Mr West relied on paragraph 12 of the second appellant's statement and paragraph 5 of the first appellant's statement where both appellants indicated that they were dependent on their son-in-law and daughter.
11. In relation to 4.3 of the grounds, it was the appellants' case in this appeal that the sponsor sent money and they have no other income or savings and it was repeatedly stated including orally by the sponsor who gave evidence, what those essential needs were and the judge erred by requiring a precise breakdown of the spend but failing to make any findings as to whether the appellants received any other funds.
12. Mr West noted that the refusal of entry clearance made reference to the second appellant's bank statement in the respondent's bundle (the refusal indicating that the bank statement showed regular income but these deposits did not reference the sponsor as the source). Mr West argued that it did not seem to be suggested that there were any funds from any other party. In any event there was no dispute that remittances had been made by the sponsor and it was submitted that the judge had failed to engage with that evidence and it was incumbent on the judge if she disbelieved that those funds were for the appellants' essential needs, to state why that was the case.
13. It was submitted that remittances must constitute support and that the First-tier Tribunal had before them remittances going back to 2020. Although the respondent in the refusal letter had stated that they would expect to see evidence over a longer period of time given the sponsor's arrival in 2018 in the UK, that was not the case as the sponsor and his wife, the appellants' daughter, only married in 2020, with the appellants' daughter coming to the UK in 2021. However, there was evidence of numerous remittances to the sponsor's wife prior to her arrival, which she indicated she shared with her parents, the appellants, and the judge did not refer to this evidence.
14. If the judge had disbelieved that the money being sent to the sponsor's wife was not being shared with her parents, it was incumbent on her to provide reasons. The judge also referred at [34] to the evidence that shop owner's maintain records of sale items and transactions and of local stores ledgers and that although the shopkeeper had produced evidence of slae items and transactions, the judge was not satisfied that this demonstrated the appellants' essential needs. Mr West submitted that this was reflective of the judge's flawed reasoning, which focused on receipts. The sponsor had explained that receipts were not issued and when evidence was provided from shopkeepers of the appellants' purchases, that too was criticised. The appellants were not suggesting that this evidence in itself demonstrated their essential needs.
15. At [36] the judge found the proof of dependency to include a "woefully inadequate" income and expenditure statement. It was submitted that it was not a case where the appellants were claiming lavish expenditure and the judge only needed to be satisfied that it was more probable than not that some of those needs were met by the funds which had been sent by the sponsor for a significant time, three years prior to the

application, which strongly mitigated against a finding that the support was contrived in any way.

16. It was submitted that whilst the refusal letter had indicated that the first remittance was in October 2022 the appellants' bundle included evidence of further remittances including in February 2022, April 2022 and June 2022 as well as remittances from the sponsor to the appellants' daughter prior to her coming to the UK. It was submitted that the judge did not deal with any of this evidence instead concentrating on the specific breakdown of expenditure.
17. In relation to ground 2, this considered the judge's findings from [38] onwards where it indicated that there were "other" credibility issues whereas Mr West was unable to identify any credibility issues prior to [38] and it was submitted that the judge engaged in speculation in relation to the appellants' son. It was argued that in relation to [39] the appellants' son attended the appellants' wedding although it was not entirely clear how much further this finding takes the issue. Mr West relied on **MK (duty to give reasons) Pakistan [2013] UKUT 641**; a bare assertion by the judge, that she believed the appellants' son was supporting them, was insufficient. If the judge did not believe the appellants' witness statement evidence that no other relatives looked after them, the judge needed to make findings to that effect and give reasons for those findings..
18. Although there was no Rule 24 response in oral submissions Mr Terrell agreed that if ground 1 was made out this was sufficient in terms of materiality that the decision could not stand. Mr Terrell agreed that Mr West was right to abandon the first part of ground 1, including that it was clear that essential needs could be subjective and might vary in different cases, Mr Terrell agreed with the Tribunal's observation that the judge was not saying, at [30] that evidence of essential was something that was specifically required in Appendix EU. However, there has to be some evidence of what essential needs are for a Tribunal to make findings under the relevant provisions. It was submitted that there was no error in [30] in the judge's self-direction.
19. The judge had been correct, it was submitted, in setting out the law. The next question was whether the judge applied the law correctly. Mr Terrell submitted that at [32] there was a danger of reading too much into the second sentence of [32] which stated that it was "entirely unclear from the evidence as to what the appellants' essential living needs are and whether they require support from the sponsor to meet those needs (in whole or in part)". Mr Terrell submitted that the judge was referring to oral evidence whereas the sentence below in [32] discusses the sponsor's written evidence.
20. In terms of the appellants' challenge to the judge's findings from [33] onwards, Mr Terrell submitted that the appellants' challenge was "island hopping" as opposed to considering the whole sea of evidence which is what the judge had focused on. It was submitted that neither the grounds nor Mr West's submissions had challenged what the judge found at [35] that there was a discrepancy in relation to the evidence of the sponsor's wife, which was that most of the money that was sent went on the appellants' medical expenses, whereas the income and expenditure schedule stated that the income was £50 to £70 a month with £30 spent on food, £10 on bills and £20 on medicine and Mr Terrell submitted that was the context in which the judge had made her criticism. Although Mr West had made the point that receipts are only evidence of what has been spent, this is relevant in the context of [35] as if there had been evidence of expenditure in fact exceeding the claimed £70 a month that would have been pertinent.

21. Mr Terrell submitted that the Tribunal was rationally entitled to find those limitations in the evidence and that the appellants had not discharged the burden to show that they were dependent on the sponsor. In relation to [37] of the judge's decision, the permission grounds did not address the judge's point; the judge was not looking at money receipts in isolation but looking at all the evidence in the round.
22. In relation to ground 2 Mr Terrell noted that there were no oral submissions from Mr West including on the procedural fairness point. Credibility had become an issue in cross-examination and therefore there cannot be a sensible point about procedural fairness. Mr West conceded that this was the case. Mr Terrell submitted that it was the evidence from one of the sponsors that sons are responsible for parents and not daughters and the case then becomes an examination of whether the sponsors were telling the truth about the sponsor's brother and Mr Terrell relied on what the judge said at [22] and [23] of the decision where the appellants' daughter had given evidence including about her brother. With respect to the judge's reference at [38] to "other credibility issues" Mr Terrell took this to mean from [38] onwards and it was quite clear the judge did not believe the appellants and the approach was rational and adequately reasoned. Such an approach may be robust but the judge was entitled to reach those conclusions.
23. Mr West in reply again stated that the final three lines of [30] was wrong in terms of self-direction as there is no requirement to demonstrate what essential living needs are and this informed the judge's approach. In relation to [31] Mr West conceded he would abandon that issue in the grounds as to the definition of essential living needs and such being subjective.
24. In respect of paragraph [32] Mr West maintained that there are incorrect findings which are unsustainable including the claim that there was no evidence in the sponsor's wife's witness statement and the sponsor not detailing what the expenses are. Mr Terrell's reference to reading too much into [32] related only to the danger that errors would be found by reading paragraph [32].
25. Mr West drew the Tribunal's attention to the relevant respondent's guidance on dependency including evidence of financial transfers such as money transfers can be considered and the judge had not grappled with this and instead focused solely on items of expenditure in circumstances where the appellants have always maintained that they do not have receipts. In essence the appellants provided everything that it was feasible to do so and the judge had not examined this properly.
26. In relation to Mr Terrell's submissions on [35] Mr West noted that the daughter may have misstated the position and strictly speaking "most" would imply over 50% whereas it was detailed as £20 for medicine and the judge's approach was in some ways emblematic of the overly exacting and forensic approach taken, whereas the whole point is that it is impossible to provide detailed itemised expenditure monthly as this may change month on month.

Conclusions – Error of Law

27. I am satisfied that a material error of law is made out in ground 1. As the parties agreed that any material error in ground 1 would render the decision unsafe in its entirety, I need not consider ground 2.

28. The judge correctly directed herself at [29] as to the definition of dependent in Appendix EU and went on at [30] to set out that it must be demonstrated that without the financial or other material support from the EEA citizen, the appellants would not be able to meet their essential living needs. There was no error per se in the judge's statement at the latter half of [30] in stating that to prove the appellants' status as dependants, evidence was required to demonstrate what those essential living needs were and their reliance on their EEA citizen for meeting them. It is sufficiently clear that this was not a statement of any legislative provision or requirement, but rather the logical outworking of the relevant provision; if the appellants have to demonstrate on balance that they could not meet their essential living needs, in whole or in part, without the financial or other material support of the relevant EEA citizen, it is difficult to see how they could discharge that burden without demonstrating both what those essential living needs are and how they relied on the EEA citizen to meet them.
29. However, where the judge fell into error was in focusing almost exclusively on what those essential living needs were. Any such consideration of essential living needs had to be considered in the context of the funds which had been remitted to meet those needs, and the judge made no adverse findings in relation to the remittances which had been made.
30. The judge's rationale, in reaching the findings that it was 'entirely unclear' what the precise essential living needs were, was not provided. The judge acknowledged at [32] that the sponsor's evidence was that he fulfils all of those needs. It was not disputed that to succeed the sponsor only needed to demonstrate that they met those needs, at least in part.
31. Even if the statement of essential needs was not as precise as the judge might have preferred, providing it is established on balance, that the remittances provided by the sponsor are meeting some of those needs, that is sufficient. The judge did not grapple with this issue.
32. Instead the First-tier Tribunal erroneously focused almost exclusively on the essential living needs issue and made adverse findings, including in relation to the schedule of income and expenditure and a schedule of money transfers. Whilst the schedule of income and expenditure was brief, the judge failed to provide adequate reasons as to why this was 'woefully inadequate'. Whilst the judge found that there was no attempt to detail recurring expenses, from housing and utilities to transportation and other detail costs, the appellants provided a series of stamped ledgers from a shopkeeper in an attempt to address the absence of receipts.
33. The judge noted at [34] that the sponsor in his additional witness statement stated that as household receipts are not issued in their village in Bangladesh, the shop owners maintain a record of sale items and transactions and the shopkeeper had produced the food items along with the relevant records which had been stamped for authenticity. Whilst the judge dismissed this evidence, indicating that it did not "demonstrate the appellants' essential needs" it is unclear what the judge might have accepted as sufficient to demonstrate those needs.
34. In reaching the adverse conclusions that the First-tier Tribunal did, the judge failed to consider the evidence in the round which included the evidence of the remittances from the sponsor including to the appellants' daughter prior to her coming to the UK, the

continuing remittances for a number of years prior to the application, the income and expenditure schedule, medical prescriptions and the list of food items. Whilst the judge cited that these were submitted without any “comment or explanation” there was no adequate reasoning as to why the explanations of the appellants and the sponsor and his wife as to the appellants’ expenditure were rejected.

35. The judge’s finding at [36] that the appellants’ proof of their dependency ‘rests on a list of food items, medical prescriptions and a woefully inadequate income and expenditure statement’ fails to take into account that the evidence of remittances from the sponsor were also a factor relevant to the issue of financial support and dependency. Whilst the judge went on to find at [37] that ‘remittance receipts’ did not give ‘a sufficiently comprehensive picture of the appellants’ overall essential living needs’, that is a misunderstanding of the role of such evidence.
36. The judge also appeared to either overlook or misunderstand the evidence of the sponsor and his wife in stating at [32] that the sponsor did not detail the appellants’ essential needs and that the sponsor’s wife’s witness statement contained no evidence about what constitutes her parents’ essential needs. The sponsor at paragraph 9 of his first witness statement indicated that he was the appellants’ only source of funds and without such the appellants would have ‘no ability to buy food, clothing, medicines or other essentials’. Equally, his wife’s statement, at paragraph 9 makes a similar statement. Whilst this list of essential needs might have been brief, the judge erred in finding that there was ‘no evidence’.
37. Whilst a mistake in fact in itself will not necessarily constitute an error of law, considered cumulatively, it cannot be said that the judge would have reached the same conclusion had she not made those errors and had she not failed to consider the evidence of essential needs in the context of the continuing remittances from the sponsor.
38. I am satisfied therefore that a material error of law is disclosed in ground 1 and the error is such that the decision of the First-tier Tribunal cannot stand and is set aside.

Notice of Decision

39. The making of the decision of the First-tier Tribunal did contain an error on a point of law.
40. I set aside the decision which will be re-made at a further hearing before the Upper Tribunal.

DIRECTIONS

- A. The appeal is to be relisted before a single Judge or Deputy Judge of the Upper Tribunal.
- B. The appellants’ representative is directed to file any additional evidence relied on and if so, to serve a consolidated bundle of any such evidence together with a Rule 15(2A) application no later than two weeks prior to the relisted hearing.
- C. The appellants’ representative is to file a consolidated indexed appellant’s bundle. The bundle is to separately tabulate: (i) the evidence relied upon before the First-tier

Tribunal; and, (ii) the additional evidence that it is now sought to rely upon before the Upper Tribunal. This should include a schedule detailing the relevant pages showing remittances and where these are cross-referenced in the appellants' bank statements. The Tribunal would be assisted by a separate schedule, individualising and detailing the appellants' expenses and cross-referencing these to the evidence in the consolidated bundle.

- D. The Secretary of State is to file and serve by no later than one week prior to the relisted hearing any evidence relied upon that is not contained within the bundle the Secretary of State relied on before the First-tier Tribunal and any respondent's review.
- E. The Secretary of State is to file and serve by no later than one week prior to the relisted hearing any evidence relied upon that is not contained within the bundle the Secretary of State relied on before the First-tier Tribunal and any respondent's review.
- F. The case is to be listed for three hours. Bangladeshi Sylheti interpreter required.
- G. Any failure to comply with these directions may lead the Tribunal to exercise its powers to decide the appeal without a further oral hearing or to conclude that the defaulting party has no relevant information, evidence or submissions to provide.

M M Hutchinson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2024