



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

Appeal Number: UI-2022-000415
EA/00528/2021

THE IMMIGRATION ACT

**Heard at Field House
On 25 May 2022**

**Decision & Reasons Promulgated
On 3 November 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MST SAJEDA KHATUN SEJU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Karim, Counsel, instructed by Sarker Solicitors

For the respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

- 1.** The appellant, a citizen of Bangladesh, appeals with permission against the decision of First-tier Tribunal Judge Chohan ("the judge"), promulgated on Newell 5 January 2022 following a hearing on 3 December 2021. By that decision, the judge dismissed the appellant's appeal against the respondent's decision, dated 27 November 2020, refusing to issue her with a family permit under the Immigration (European Economic Area) Regulations 2016 ("the Regulations").

The decision of the First-tier Tribunal

2. In a brief decision, the judge concluded that the appellant had failed to demonstrate that she was dependent on the EEA sponsor (the appellant's nephew). The judge accepted that the sponsor sent money to the appellant and that she used that money to pay for food, utility bills, and other expenses. However, the judge concluded that there was "no evidence" of the appellant's personal and financial circumstances, that there was a "lack of evidence" on the question of dependency, and that she (the judge) was not satisfied that the funds sent by the sponsor were for the appellant's "essential and basic needs.": [12].

The grounds of appeal

3. Two grounds of appeal were put forward. First, the judge erred by failing to have regard to, and/or make findings on, the sponsor's own evidence. That evidence went to the issues of the appellant's circumstances in Bangladesh and the use put to the money sent by the sponsor to her over the course of time. Second, the judge failed to have regard to relevant documentary evidence, which again went to the question of dependency.

Conclusions on error of law

4. At the outset of the hearing, Mr Walker conceded that the judge's decision was vitiated by material errors of law and that it should be set aside. I am entirely satisfied that that position was correct.
5. The judge failed to engage with the sponsor's evidence when setting out her conclusions and certainly failed to make any specific findings as to whether that evidence was reliable or not. Further, the judge clearly failed to engage with the documentary evidence which went directly to the question of whether dependency existed.
6. The judge's decision is fundamentally flawed and must be set aside.

Re-making the decision

7. Both representatives were agreed that I could and should go on and re-make the decision in this appeal based on the evidence before me. It was clearly appropriate that I should take that course of action.
8. Mr Karim called the sponsor, who formally adopted his witness statement and confirmed that he continued to provide material support to the appellant in the same manner as he had over the course of a significant period of time. The financial support was used by the appellant to meet essential living costs such as rent and food.
9. Mr Walker confirmed that he took no issue with the sponsor's credibility and he accepted that the evidence as a whole indicated that the appellant was dependent on the sponsor for the purposes of regulation 8 of the Regulations.

- 10.** I find as a fact that the sponsor's evidence and the documentary evidence before me is all entirely reliable. It clearly demonstrates that (i) the sponsor has been remitting funds to the appellant for a substantial period of time (ii) that the appellant has relied, and continues to rely, on the remitted funds to pay for, amongst other things, food and her accommodation (iii) that the appellant has no other source of income (I find that no support has emanated from either of the sponsor's two brothers, and Mr Walker did not suggest otherwise) and (iv) the appellant is indeed dependent on the sponsor in order to meet her essential living needs.
- 11.** It follows that the appellant's appeal falls to be allowed.

Postscript

- 12.** As can be seen, my decision has been delayed by a number of months. For this, I apologise.

Anonymity

- 13.** The First-tier Tribunal made no anonymity direction there is no basis for me to do so.

Notice of Decision

- 14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**
- 15. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**
- 16. I re-make the decision by allowing the appeal, pursuant to the Immigration (European Economic Area) Regulations 2016.**

Signed: H Norton-Taylor

Date: 3 November 2022

Upper Tribunal Judge Norton-Taylor