



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

**Appeal Number:
EA/00769/2021 UI-2022-003049**

THE IMMIGRATION ACTS

**Heard at Field House
On the 8 November 2022**

**Decision & Reasons Issued
On the 28 November 2022**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**FOIZ SAGOR
(ANONYMITY NOT ORDERED)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Lindsay, Senior Presenting Officer
For the Respondent: Mr Rehman, instructed by Connaught Law

DECISION AND REASONS

1. It is accepted by the Secretary of State in this case that Judge Cohen erred in law in dismissing the appellant's appeal. At the hearing before me, Mr Lindsay and Mr Rehman agreed that the proper course was to remit the appeal to be heard afresh by a judge other than Judge Cohen. I agree that the judge erred, and that this is the proper relief which should follow. In the circumstances, I propose to set out very briefly the respects in which it is clear that the judge fell into error.
2. The appellant's application was for an EEA Family Permit under the Immigration (EEA) Regulations 2016. He sought to join his aunt, who was said to be an Italian national exercising her Treaty Rights in the UK. He was said to be her extended family member by virtue of his financial dependence upon her. The respondent did not accept that the

appellant and the sponsor were related as claimed, or that the former was dependent on the latter for his essential living needs.

3. The judge heard the appeal remotely on 17 August 2021. His decision was issued eight months later, on 1 April 2022. It is clear, however, that a delay between hearing and determination is not sufficient to render a decision unsafe and that what must be demonstrated is that the delay caused the decision to be unsafe: SS (Sri Lanka) v SSHD [2018] EWCA Civ 1391. Unfortunately, in this case, it is quite clear that the decision is unsafe, although it is unclear whether the errors are the result of the delay. As submitted in the grounds of appeal, the judge erred in:
 - (i) Failing to proofread the decision adequately or at all. It is replete with typographical errors which make the decision incomprehensible in parts. One verbatim example suffices, from [6] of the decision: “the appellant provided Bangladeshi best at getting his father’s name confirming his late father’s parentage.” There are also various instances of the judge misdirecting himself as to the gender of the appellant or the sponsor, and even the number of appellants in the case. The word ‘oops’ also appears on the front page of the decision, under the names of the advocates. It is unfortunately apparent that no proper care has been taken over the decision.
 - (ii) Misdirecting himself as to the requirement of dependency in EU Law. At [17], he indicated that ‘appropriate case law’ stated that ‘mere financial support is insufficient in order to satisfy dependency’. That statement is not attributed to any particular authority and is flatly at odds with the jurisprudence, which makes clear that the principal question is financial dependency, and is gauged by assessing whether the sponsor is responsible for the essential living needs of the applicant. (See, for example, Latayan v SSHD [2020] EWCA Civ 191; [2020] Imm AR 841.)
 - (iii) Misdirecting himself in law in requiring there to be evidence of communication between the appellant and the sponsor, or visits by the sponsor to see the appellant in Bangladesh. As above, there is no such requirement and it is unclear what the source of any such requirement was thought by the judge to be.
 - (iv) Providing, as Judge Komorowski put it when granting permission to appeal, a ‘want of requisite consideration’ in material respects. There was, for example, no or no adequate consideration of the oral evidence given by the sponsor. Whilst I can only speculate as to the reasons for that inadequacy, the overwhelming likelihood is that the delay between hearing and consideration was such that the judge had little if any recollection of the oral evidence which was given.
4. In all the circumstances, the respondent was quite right to accept that the decision of the FtT cannot stand and must be set aside. Any judicial proceedings are important and a judge must demonstrate by his reasoning that he has understood the matters in issue and has

applied his mind carefully to the resolution of those matters in accordance with the law. This decision regrettably falls well short of meeting those minimum requirements and cannot stand.

Notice of Decision

The FtT erred materially in law and its decision cannot stand. The decision is set aside and is remitted to be heard afresh by a judge other than Judge Cohen.

No anonymity order is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 November 2022