



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2023-000199
UI-2023-000200

First-tier Tribunal Nos: EA/07717/2021
EA/52571/2021
IA/10427/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 November 2023

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) IFRA AZMAT
(2) UMAIR ALI
(ANONYMITY ORDER NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr Z Nasim, Counsel instructed by Legal Rights Partnership

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 28 April and 17 October 2023

DECISION AND REASONS

BACKGROUND

1. The appellants appeal against the decision of First-tier Tribunal Judge Plowright promulgated on 26 October 2022 (“the Decision”) dismissing the appellants’ appeals against the respondent’s decisions dated 11 March 2021, refusing them entry clearance as extended family members under

Regulation 8 of the Immigration (European Economic Area) Regulations 2016.

2. The appellants are related to each other as sister and brother, and both of them are nationals of Pakistan. On 8 November 2020 they each applied for entry clearance as extended family members of their sibling, Moazam Ali Azmat Begum. He was their younger brother, who had acquired Spanish nationality and who had arrived in the UK as a Spanish national on 27 September 2017. Both the appellants declared that they were married, and they give different home addresses from each other.
3. In her application, the first appellant said that she was receiving financial support from her sponsor at a rate of £300 each month; and in his application the second appellant said that he was receiving £500 each month from the sponsor. They kept in touch with the sponsor by phone and social media.
4. In the section headed "Partner/spouse details", the first appellant said that she was married to Muhammad Zeeshan Ashfaq, and in answer to the question as to whether they were currently living together, she answered 'yes'.
5. On 29 March 2021 an Entry Clearance Officer issued separate refusal decisions to each of the appellants on identical grounds. As evidence of financial dependency upon their EEA national sponsor, they had provided various money transfer remittance receipts, but it was noted that these transfers were dated sporadically between 2019 and 2020. This limited amount of evidence in isolation did not prove that they were financially dependent upon their sponsor. In addition to money transfer receipts, the respondent would also expect to see evidence which fully detailed their and their family's circumstances: evidence of their income, expenditure and their financial position which would prove that without the financial support of their sponsor their essential living needs could not be met.
6. In support of the appellants' appeals, the sponsor made a witness statement signed by him on 3 March 2022. In his statement, he said that both Umair and Ifra were married, but unfortunately Ifra had been separated from her husband for quite some time, and so continued to live with his mother and brother, together with her son. Umair had two children. Their mother had always been a housewife and she was dependent upon their father, until the complete breakdown of their relationship in 2017. Thereafter, his mother and siblings became dependent upon him. Ifra was dependent upon her husband from the date of their marriage in late 2018 until they separated in or around August 2020. She was pregnant with her son, Azlan, at the time.
7. He had received his Spanish passport through his father in 2017. He travelled to Spain and promptly thereafter moved to the UK due to problems between his mother and father. He had remained in the UK ever since. The problems between his father and mother related to his father's

failure to do anything about them joining him in Spain. This was an issue that had been brewing between them many years beforehand. His father applied only for a passport for him, despite his other siblings apparently being eligible too.

8. Initially, he had remitted all the funds to his mother, who applied the funds for the benefit of the entire family unit. As a result of his mother's health issues and inability to go and collect the funds, he had more recently been making remittances to his brother, and in this way continued to support the family unit. His brother was aged 27 and did not have any qualifications. He had never worked, and jobs were very difficult to come by for people with no qualifications. Following their separation in or around August 2020, Ifra had returned to the family home and had lived there ever since. Her estranged husband had not provided her any support, whether for herself or their child. Hence, she had been dependent upon him as well. He continued to make remittances to Umair, who applied the monies for the benefit of the entire household.
9. The sponsor gave a breakdown of the finances of the family unit that he was supporting. The total was RS79,750 per month.
10. The appeal of the second appellant was on CCD, whereas the first appellant's appeal was not. According to the ASA filed for the second appellant's appeal on 3 March 2022, this was because the first appellant's appeal had been closed due to non-payment of a Tribunal fee.
11. In the ASA for the second appellant's appeal, it was submitted that the money transfers were not sporadic, but were, "clear evidence of continued and continuous support over a prolonged period of time."
12. The Pre-Appeal Appeal Review Unit (PARU) prepared a respondent's review in response to the above ASA and the evidence filed on behalf of the second appellant, who was simply referred to as "A".
13. PARU acknowledged sight of money transfers from the sponsor to A as follows: 5 transfers between February and December 2019; 8 transfers between April and October 2020; and 12 transfers between January and December 2021. The respondent however noted that there were gaps between transfers: April to December 2019 (7 months); December 2019 to April 2020 (3 months); October 2020 to January 2021 (2 months); and March 2021 to October 2021 (6 months).
14. PARU acknowledged sight of an electricity bill from January 2022; a telephone bill from September 2021; and bills issued by a Surgical Centre. But it was noted that none of the bills were in the name of A.
15. PARU submitted that money transfers alone were not determinative of dependency and that documentary evidence had not been provided in relation to A's circumstances to show what the money was being used for. Insufficient evidence had been provided to demonstrate that A was

dependent upon the sponsor for some or all of his essential needs. They acknowledged the witness statement of the sponsor, and submitted that such evidence required to be tested at an appeal hearing.

The Hearing Before, and the Decision of, the First-tier Tribunal

16. The appellants' appeals came before Judge Plowright sitting at Birmingham on 25 October 2022. Both parties were legally represented, with Mr Tony Muman of Counsel appearing on behalf of the appellants, and Mr Tony Malcolm, Home Office Presenting Officer, appearing on behalf of the respondent.
17. As noted by the Judge at para [4] of the Decision, the documentary evidence before him comprised the respondent's bundle for the first appellant, Ifra Azmat; a short appellant's bundle for her, of only 16 pages; and a stitched bundle for the second appellant, Umair Ali, consisting of 108 pages. As indicated earlier, the background to this was that the appeal of the second appellant was on CCD, with an additional appeal reference number of IA/10427/2021.
18. The Judge received oral evidence from the sponsor, who was assisted by an Urdu Interpreter. The sponsor was cross-examined by the Presenting Officer and he answered some questions from the Judge.
19. The Judge's discussion and findings began at para [9] of the Decision. At para [10] the Judge summarised the reasons given by the respondent for not accepting that the appellants were financially dependent upon their EEA sponsor. At paras [14] to [21], the Judge reviewed the evidence given by the EEA sponsor both in his witness statement and orally. At paras [22] to [28], the Judge reviewed the documents relating to transfers of money from the sponsor over the period 30 December 2017 to 6 October 2022. He noted that the appellants had produced 51 money transfer receipts covering this period. Prior to 8 February 2019, all the money transfers were from the EEA sponsor to the appellants' mother. After that date, one transfer was from the EEA sponsor to the appellants' mother, and the rest were to the second appellant.
20. As well as noting the gaps between money transfers, the Judge also noted the highest and lowest amounts of money sent in each period when transfers were being made.
21. At para [29] the Judge noted that the supporting evidence for the expenditure detailed by the sponsor in his witness statement comprised one invoice from a power company issued on 1 February 2022; and one invoice from a telecommunication company dated 3 October 2021. There were also prescriptions for the appellants' mother.
22. The Judge continued:

- “30. In both the case of *Moneke* and the Home Office Guidance, it is made clear that dependency relates to essential living needs. Provided a person would not be able to meet his or her essential living needs without the financial support of the EEA national, he or she should be considered dependent on that national.
31. However, it is not at all clear from the evidence that is available to me that the money that is being sent is for the appellants’ essential living needs. In the EEA sponsor’s witness statement, he sets out the calculations showing that the appellants require RS 79,750 per month. Whilst I accept that the EEA sponsor has been sending money to his mother and the second appellant between 2017 and 2022, the amounts that are sent vary considerably and there are significant gaps between transfers of money during this period. I was not provided with any explanation why there were these gaps. The first appellant’s case is that she has been solely reliant upon the EEA sponsor since her separation from her husband in August 2020. The second appellant’s case is that he has been solely reliant on the EEA sponsor since their father stopped supporting them. However, when I consider the gaps between money transfers over the years, of several months, I am not satisfied that the appellants could be solely reliant upon the EEA sponsor because the money that is being sent to them is not sufficient to cover all of their expenditure of RS 79,750.
32. I am further not satisfied that the appellants have given me an accurate account of their domestic circumstances. In his witness statement, the EEA sponsor states that the estrangement between his father and his mother occurred in 2017 and was caused by the fact that his father did not arrange for the whole family to join him in Spain. However, in oral evidence, he stated that his father attended his daughter’s wedding, which the marriage certificate shows took place on 08 December 2018 and the estrangement occurred then because he was not happy about his daughter’s marriage. These are two different accounts of why the appellants’ parents separated and in light of this, I am not satisfied that I have [been] given an honest account of the relationship or lack of one between the appellants’ mother and father.
33. I am also asked to believe that the first appellant separated from her husband in August 2020, even though they had been married for less than two years and have a young child together. I also note that this application was made on 08 November 2020, which is two months after the alleged separation. In light of these factors, I am not satisfied that I have been given an honest account of the situation relating to the first appellant and her husband and do not accept that they are separated from one another. I find that the alleged separation has been fabricated to support this application.
34. ...
35. In conclusion, I am not satisfied that I have been given an honest account of the domestic circumstances of the appellants. Although I have been provided with several money transfer receipts, there are significant unexplained gaps for several months at a time, when the EEA sponsor has not sent money to the appellants. Given that the appellants

claim that they are solely reliant upon the EEA sponsor, I have been offered no explanation as to how they were able to financially support themselves during these periods of time.

36. Therefore, on the evidence available to me, I am not satisfied that the appellants have shown that they are financially dependent upon the EEA sponsor for any of their essential living needs.”

The Grounds of Appeal to the Upper Tribunal

23. Ground 1 was that the Judge had fallen into material error in holding at para [31] that the money was not being transferred to meet the appellants’ essential living needs. This finding was not open to the Judge to reach on the established principle that money remittances *per se* amount to sufficient evidence of financial dependency.
24. Alternatively, the Judge’s finding on this point had ambushed the appellants. The sponsor was not cross-examined on the consistency and/or regularity of his remittances.
25. Ground 2 was that the Judge had erred in finding at paras [32] and [35] that the appellants had not given an accurate/honest account of their domestic circumstances. In effect, the Judge had found the sponsor not to be a witness of truth based on the Judge’s perception of inconsistent answers given by the sponsor regarding his parents’ separation. The Judge’s finding on this point had ambushed the appellants. Credibility was not in issue pleaded in the respondent’s review, and the sponsor was not cross-examined by the Presenting Officer on this perceived inconsistency.
26. Ground 3 was that the Judge had materially erred at para [33] in finding that the separation between the first appellant and her husband was a fabrication. This serious and far-reaching finding was not put to the sponsor in cross-examination, or by the Judge in his clarificatory questions. It was also not an issue pleaded in the respondent’s review
27. Alternatively, his finding was perverse. None of the factors cited in para [33], alone or cumulatively, gave rise to a rational basis on which the Judge could reasonably conclude that the first appellant was not separated from her spouse as claimed.

The Reasons for the Initial Refusal of Permission to Appeal

28. Permission to appeal was initially refused by First-tier Tribunal Judge Moon on 15 December 2022. The Judge held that Judge Plowright had given sound reasons for his findings, and that neither the grounds nor the Decision disclosed any arguable error of law.

The Renewed Application for Permission to Appeal to the Upper Tribunal

29. Mr Muman, who had settled the Grounds of Appeal, also settled the renewed application for permission to appeal. While Judge Moon had summarised all the grounds of appeal, he had failed to deal with the procedural fairness point when giving reasons for refusing permission.
30. The Judge had applied a global approach in assessing dependency, which was held to be incorrect in *Singh -v- SSHD* [2022] EWCA Civ 1054.
31. Not only was the issue of irregular money transfers not put to the sponsor in cross-examination, but an overall holistic assessment showed that while remittances were not made monthly, the overall remittances that were made were consistent with the appellants' expenses which would have varied through the passage of time due to the high rate of inflation in Pakistan. Remittances made in 2020 averaged RS 82,594 per month; in 2021 RS 76,193; and on a *pro rata* basis in 2022, RS 94,953. Therefore, contrary to the conclusion of the First-tribunal Judge, the remittances made were actually consistent with the overall stated annual expenses.

The Reasons for the Eventual Grant of Permission

32. On 13 March 2023 Upper Tribunal Judge Rintoul granted permission to appeal for the following reasons:

“It is arguable that, as is averred, the procedural irregularities arose in matters on which adverse findings were made were not put to the appellants. It is arguable that a procedural error arose from the appeals being refused on the basis of matters not raised in the respondent’s review.

Although there is less merit in the other grounds, I do not restrict the grant of permission.”

The Initial Hearing on 28 April 2023

33. As is recorded by UTJ Smith in her written decision giving reasons for adjourning the error of law hearing, and making directions for the provision of further evidence, it became apparent to her after Mr Nasim embarked on his submissions that she was going to be asked to determine whether the Judge had acted in a procedurally unfair manner, without any evidence (save for the CID minute) as to what had occurred at that hearing. She noted that the minute suggested that at least one of the points which it was said was unfairly raised only in the Decision was made by way of submission at the hearing. Mr Nasim disputed this on the basis that the CID minute was a summary and an internal minute not intended to record the substance of the hearing. Although Mr Nasim invited her to infer that matters were not put to the sponsor due to the absence of the Judge’s reference to this, this was not in her view sufficient to show that the points on which the Judge relied were not raised.

Further evidence and representations following the Hearing on 28 April 2023

34. In compliance with the directions made by UTJ Smith, Mr Muman made a witness statement signed on 19 May 2023, to which he exhibited as TM1 a typed-up version of his verbatim notes of the evidence given by the sponsor at the hearing.
35. In an unsigned statement made on 5 June 2023, Mr Malcolm confirmed that he had attended the hearing on 25 October 2023 at IAC Birmingham and had presented the cases of Umair Ali and Ifra Azmat. He confirmed that everything stated on the CID minute was a clear and accurate record.
36. In the minute dated 25 October 2022, Mr Malcolm said *inter alia* as follows:
- “Subs relied upon the refusal notices and the review documents and invited him to dismiss the appeals.
He submitted it was not credible that the sister’s husband had not seen their child and had stopped supporting them both. The appellants’ father was supporting the whole family previously and now he has abandoned the family. The house is still in his name and so are the household bills. No divorce proceedings have taken place for either their father and mother or first appellant and her husband in Pakistan. All of these features lack credibility.
I relied upon the case of Lim. The sponsor thinks his brother and mother have bank accounts. If that is the case we do not have them to confirm they have no other income other than the funds the sponsor sends to them. Is it credible that his older brother does not work and has never worked considering he has a wife and two children?”
37. In an email sent on 5 July 2023, Mr Clarke set out the respondent’s position in the light of Mr Muman’s witness statement and his record of proceedings contained in TM1. Mr Clarke said that the Secretary of State was unable to confirm or deny the contents of Mr Muman’s record of proceedings, because the HOPO’s minute did not contain a minute of questions asked and answered. But Mr Muman appeared to accept the contents of the HOPO’s minute in respect of the submissions that the HOPO had made after the evidence had been completed. It was abundantly clear from Mr Muman’s record of cross-examination that the sponsor was cross-examined on the family’s circumstances, and that submissions were made on the credibility of the evidence by reference to “*the Lim test*”.

The Resumed Hearing in the Upper Tribunal

38. At the resumed error of law hearing before us, Mr Nasim submitted that the evidence showed that the sponsor did not get the opportunity to address the findings that were challenged in the Grounds of Appeal.

39. On behalf of the respondent, Mr Clarke submitted that it did not appear that the contents of the CID minute were disputed. There was no procedural unfairness as the relevant credibility issues had been raised either in the refusal decision; the respondent's review; or in the HOPO's closing submissions. Mr Clarke took us through various questions and answers in the record produced by Mr Muman to show that, in his submission, there was an evidential basis for the adverse credibility submissions that the Presenting Officer had made after the sponsor had completed his oral evidence.
40. In reply, Mr Nasim maintained that the Decision was vitiated by procedural unfairness. The appellants' case was not based on what had been said by the Presenting Officer in closing submissions. The appellants' case was that the sponsor was not given an opportunity to address in his oral evidence the asserted discrepancies that formed the basis for the Judge's adverse findings. It was also clear that the submissions made by the Presenting Officer did not form part of the Judge's reasoning.

DISCUSSION

41. Our starting point is that we now have the best evidence which is available as to the conduct of the hearing. There is no challenge by the respondent to the record of questions and answers that Mr Muman has transcribed from the verbatim notes which he made at the time. Equally, no evidence has been put forward to challenge the accuracy of the Presenting Officer's CID minute made on the day of the hearing in which he summarised the submissions which he made after the sponsor had completed his oral evidence.
42. It is apparent from Counsel's record of the sponsor's cross-examination that the Presenting Officer did not adopt a confrontational style in cross-examination whereby he put to the sponsor that he was not telling the truth, either generally or with reference to a specific issue. However, it appears to us that the Presenting Officer carried out the exercise which was envisaged in the respondent's review, which was to probe the sponsor's account given in his witness statement, thereby eliciting details that were not in it, such as that all the bills for the household in Pakistan continued to be in his father's name.
43. As to the Presenting Officer's closing submissions, Mr Muman does not dispute in his witness statement that the CID minute constitutes an accurate summary of them. We are therefore satisfied that the Presenting Officer expressly invited the Tribunal to find not credible the interlinked claims that the family had been abandoned by the appellants' father due to a rift with their mother, leading to the sponsor becoming the family's sole source of income; and that, despite her marriage and having a child by her husband, the first appellant was totally financially dependent on the sponsor, as a result of separating from, and being financially abandoned by, her husband/the child's father; and also as a result of the earlier abandonment of the family by her father.

Ground 1

44. There are two limbs to Ground 1. The first limb is that it was not open to the Judge to find against the appellants on the ground that there were gaps between transfers, and an inconsistency in the amounts remitted. It is submitted that it was not open to the Judge to reach such a finding on the established principle that money remittances *per se* amount to sufficient evidence of financial dependency.
45. There is no merit in this submission. While it is true, as was acknowledged by the Judge at para [13] of the Decision, that Home Office Guidance states that evidence of dependency can include bank statements and money transfers, the Judge correctly directed himself at para [11], where he cited *Moneke & Others (EEA - OFMs)* [2011] UKUT 341, at [42] *inter alia* as follows:
- “We note further that Article 10(2)(e) of the Citizens’ Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by cogent evidence that it is in part documented and can be tested as to whether the level of material support, its duration and impact upon the applicant combined together can meet the material definition of dependency.”
46. There is no established principle that money transfers *per se* constitute cogent, let alone sufficient, evidence of dependency. We consider that it was entirely open to the Judge to find that the appellants’ case that they had been solely dependent upon the sponsor for their living needs since before the specified date of 31 December 2020 was inconsistent with the gaps in transfer activity which the Judge had identified earlier in his Decision, and that thereby the appellants had not discharged the burden of proving that they were or had been solely reliant on the sponsor to meet their essential living needs.
47. In the renewed application for permission to appeal, the appellants seek to undermine the Judge’s finding by advancing a case that if all the 51 receipts are added together, the average amount for each year roughly corresponds to the sponsor’s monthly estimate of the appellants’ living expenses, allowing for adjustments due to inflation. In oral submissions, Mr Nasim added that the variation in amounts transferred is explicable by the sponsor taking advantage of favourable exchange rates.
48. But as this is a case which was not run in the First-tier Tribunal, its introduction breaches the principle that the trial at first instance is not a dress rehearsal. In addition, the new case does not stand up to scrutiny.
49. For example, working from the schedule of remittances given in the appellants’ Rule 15(2A) Notice, it is apparent that there were 6 remittances

in the period between 8 February 2018 and 28 August 2018, which was then followed by a gap until 8 February 2019. Of the 6 remittances in the February to August 2018 period, there was only one which was as much as RS 79,500, which is the monthly expenditure figure given by the sponsor. While the average amounts remitted over the period of February to August would, we accept, go a considerable way towards meeting an average monthly expenditure of RS 79,500, what is abundantly clear to us is that there would be nothing left over to cover the family's postulated expenditure in the five months of September 2018 to January 2019 inclusive.

50. The second limb of Ground 1 is that, in the alternative, the Judge's finding on the significance of the irregularity of the money transfers has ambushed the appellants. We accept that the sponsor was not cross-examined on the consistency and/or regularity of his remittances. But the Judge did not base his finding on the amounts of the remittances, but upon their irregularity. This was the central ground on which the applications had been refused. So, the appellants knew the case they had to meet in their appeals. They knew that the money transfer receipt evidence was not regarded as reliable by the respondent (a) because it was sporadic, and (b) because there was a lack of documentary evidence about their domestic and financial circumstances in Pakistan to satisfy the respondent that the money which the sponsor had been sending to their mother, and latterly to the second appellant, was required by the appellants to meet their essential living needs.
51. In response to the assertion that the money transfers in 2019 and 2020 were sporadic, the line taken by the sponsor in his witness statement was that he had provided all the money transfers that he had from December 2017 onwards. He did not offer an explanation for the gaps of several months at a time when there were no receipts or seek to explain how the family paid their monthly bills as they fell due during these periods, if it was true that he was the only source of their income.
52. Given the circumstances set out in [50] and [51] above, it was not incumbent on the Presenting Officer to cross-examine the sponsor on the gaps in the money transfers which had been highlighted in the respondent's review. The documentary evidence - or more precisely the lack of it for significant periods - spoke for itself.
53. The appellants were not ambushed by the Judge's finding that the significant unexplained gaps of several months at a time meant that he could not be satisfied that they were solely reliant on the sponsor. On the contrary, the Judge's finding was entirely consonant with the case that had been put forward by the respondent in the refusal decisions, and in the review relating to the second appellant.

Ground 2

54. It is apparent from the transcript produced by Mr Muman that in the course of his oral evidence the sponsor gave a different account as to when and in what circumstances the appellant's father had allegedly abandoned his dependent family members, who were said to include the appellants.
55. Whereas in his witness statement the sponsor said that the rift had happened in 2017 as a consequence of members of the family being unhappy with their father not arranging for them to join him in Spain, in his oral evidence the sponsor said that the separation had happened at the wedding of his sister. After this answer had been elicited by Ms Malcolm in cross-examination, the Judge sought clarification. He asked the sponsor whether the separation had happened at the wedding of his brother/sister, the sponsor having said earlier in cross-examination that the weddings of his brother and sister had taken place at the same time with only a 2-day gap between the respective weddings. The sponsor answered the Judge's question in the affirmative. He added that the separation was because of his sister's wedding, and he indicated that things had slowly escalated from there, and then they had separated. The Judge then asked the sponsor to clarify whether his father had not been happy with his daughter's marriage, and the sponsor answered in the affirmative.
56. At para [16] of the Decision, the Judge noted that in his oral evidence the sponsor explained that his father fell out with the rest of the family at the first appellant's wedding because he was not happy with the marriage, which - the Judge observed - was different from what he had said in his witness statement.
57. The Judge's assessment of the thrust of the sponsor's oral evidence accords with Counsel's transcribed verbatim notes. No doubt mindful of the fact that the sponsor's account of the timing of, and the reason for, his parents' separation in his oral evidence appeared to differ from that given in his witness statement, the Judge asked questions by way of clarification to ensure that he had not misunderstood the sponsor on this topic. Having obtained confirmation that the sponsor was indeed giving a different account, both as to the timing of the separation and also its cause, it was not incumbent upon either the Judge or Mr Malcolm to point out the inconsistency to the sponsor and to ask him to explain it. As Mr Muman was aware of the contents of the sponsor's witness statement, it was open to him to re-examine the sponsor on the apparent inconsistency so as to give him the opportunity to address it. The fact that he did not do so - so it appears - did not make it procedurally unfair for the Judge to go on to make an adverse credibility finding based on the discrepancy between the account which the sponsor gave in his oral evidence and the account which he had given in his witness statement.

Ground 3

58. There are two limbs to Ground 3. The first is that there was procedural unfairness because the allegation was not put to the sponsor in cross-

examination. The second is that, in any event, the finding was not open to the Judge to make, and was irrational.

59. We accept that the Presenting Officer did not cross-examine the sponsor to the effect that he was not telling the truth about the first appellant having become a dependant of his, as opposed to being able to draw on continued financial support from her husband. But it is clear that in his closing submissions the Presenting Officer invited the Judge to find that that the sponsor had not given a credible account of the domestic circumstances of the appellants, and in particular he expressed incredulity at the sponsor's evidence that the first appellant's husband had stopped supporting her and their child.
60. We do not consider that it was necessary for the Presenting Officer to have put to the sponsor that he was fabricating the first appellant's separation from, and financial abandonment by, her husband in order for him to advance the case in closing submissions that the sponsor's evidence on this and other matters relating to the appellants' domestic and financial circumstances was not credible.
61. If Mr Muman had considered that the Presenting Officer had not adequately laid the ground for his direct challenge to the sponsor's credibility and honesty, it would have been open to him to raise this as an issue in his reply.
62. We do not consider that the Judge's finding was irrational in circumstances where there was no independent evidence of the first appellant being separated from her husband, and where the first appellant had not claimed to have been separated from him when applying on 8 November 2020, whereas the sponsor was now saying long after the event that she had already separated from him in or around August 2020.
63. It was open to the Judge to disbelieve the sponsor's evidence that his sister had separated from her husband, and had been at the same time abandoned by him financially, just a few months before her application for an EEA family permit on 8 November 2020, when to qualify for one she needed to be dependent upon her EEA sponsor at the date of application (and/or by the specified date of 31 December 2020, which was imminent) - rather than continuing to be dependent upon her husband whom she had married less than two years previously, and to whose child she had gone on to give birth.

CONCLUSION

64. The Judge gave adequate reasons for his adverse findings, and there was no procedural irregularity or unfairness in the Judge dismissing the appeals for the reasons he gave.

NOTICE OF DECISION

The Decision of Judge Plowright dated 26 October 2022 did not involve the making of material error of law. We therefore uphold the Decision with the consequence that the Appellants' appeals remain dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity order in favour of the appellants, and we do not consider that such an order is warranted for these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
25 October 2023