



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

Case No: UI-2022-002711

First-tier Tribunal No:  
HU/01245/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 17 July 2023**

**Before**  
**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MST MUNNI BEGUM**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Z Hussain, solicitor advocate, Zyba Law

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

**Heard at Field House on Friday 7 July 2023**

**DECISION AND REASONS**

**BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Rodger promulgated on 19 January 2022 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 13 January 2020, refusing the Appellant’s human rights claim. The Appellant’s claim was made in the context of an application to enter the UK to join her parents, Mr Mohammad Nurul Islam and Mrs Koli Begum, who are settled here (“the Sponsors”). The Appellant is now an adult but was, at the time of the application, a child.
2. The Appellant’s appeal came before me first on 30 May 2023. At that time, Zyba Law had just assumed conduct of the Appellant’s case but

was without any papers. I therefore adjourned the hearing and directed the Tribunal to send a copy of the Tribunal's hearing bundle to Zyba Law which was duly done. I also referred in my decision of that date to further documents which Mr Hussain on that occasion indicated that the Appellant may wish to submit. I did not give any directions permitting such documents to be adduced without an appropriate application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("Rule 15(2A)"). I will come to those further documents below.

3. The Appellant is a national of Bangladesh born 10 November 2002. She made the application which led to the decision under appeal on 24 October 2020 relying on her family life with the Sponsors. Her application was refused on the basis that the Respondent was not satisfied that the Appellant was related as she claimed to the Sponsors. The Respondent was also not satisfied that the Appellant met the Immigration Rules ("the Rules") because the Appellant did not meet the financial requirements of Appendix FM to the Rules. The Respondent did not accept that there were any reasons outside the Rules to grant entry clearance.
4. Judge Rodger considered the documentation produced by the Appellant and Sponsors regarding their relationship as daughter and parents. That was based on two birth certificates. Mrs Begum did not give evidence before Judge Rodger as she was considered unfit to do so for reasons set out at [13(e)] of the Decision. The Judge took this view of her own volition rather than based on any application by the Appellant's legal representatives asking that she be treated as a vulnerable witness. The Judge did not take any similar view regarding Mr Islam and heard evidence from him including about the birth certificates. For reasons set out at [13] of the Decision, the Judge did not accept that the birth certificates could be relied upon and found that the Appellant was not related as claimed to the Sponsors.
5. The Judge then went on to consider the financial requirements of the Rules. For reasons set out at [15] of the Decision, she concluded that the Sponsors and therefore the Appellant did not satisfy those requirements.
6. The Judge also considered the case outside the Rules. She found that there was no emotional, financial or other dependency between the Appellant and Sponsors which would give rise to family life within the meaning given to that in Article 8 ECHR ([19]). The Judge was in this regard considering the position as at date of hearing (January 2022) by which time the Appellant was aged nineteen years and therefore no longer a child. Even if there were family life, the Judge concluded that interference with it would be limited in the circumstances of the case ([20]). Since the Appellant could not satisfy the Rules, the Judge also found that any interference would be proportionate ([19] to [24]). She therefore dismissed the appeal.

7. The Appellant's grounds were drafted by the Appellant in person. She submitted that the Judge was wrong to find that the birth certificates could not be relied upon, complained that her mother was not permitted to give evidence and said that she was submitting DNA evidence of her relationship with the Sponsors (which was not attached). She said that it had been difficult growing up without her parents. She lives with her cousin's family. She asked to be given the opportunity to provide DNA evidence proving her relationship to the Sponsors.
8. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on 6 May 2022 in the following terms:

"1. The Appellant has drafted the grounds apparently without legal representation. Her parents gave evidence before the Tribunal Judge. Both appear to have been accepted before the Tribunal Judge. Both appear to have been accepted to be victims of modern slavery. Victims of trafficking should be treated as a vulnerable party – see Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. A failure to apply special measures and appropriate steps to ensure access to justice is likely to be a material error of law. It is arguable that the Judge not citing the Joint Presidential Guidance Note demonstrates its provisions were not in the mind of the Judge when assessing the Sponsor's evidence. There is a danger that the evidence elicited from the Sponsor cannot safely be relied upon.

2. The Judge did not have the benefit of DNA evidence. However, the Appellant in her grounds refers to DNA evidence establishing the relationship. Nonetheless this DNA evidence has not made its way to the Tribunal's file.

3. The Judge's assessment of Article 8 is arguably flawed. It appears that there was evidence before the Judge that the Appellant's mother was emotionally vulnerable. It does not appear that the Judge weighed this in finding that the relations between the Appellant and her parents went beyond mere emotional ties as per **Kugathas**. In particular the Judge notes that the parents and daughter Appellant have been separated for a number of years without having considered any potential reasons for that length of separation. There is no consideration that the parents have been found to be victims of modern slavery which may have impacted on their ability to sponsor their daughter to the UK. The Appellant is also referred to additional payslips for her father. There is no material error of law that the judge did not have regard to evidence not put before him."

9. The matter comes before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.
10. I had before me a core bundle of documents relating to the appeal, and the Appellant's bundle ([AB/xx]) and Respondent's bundle ([RB/xx]) before the First-tier Tribunal. On 6 July 2023, one day before the hearing before me, the Appellant's representatives sought to introduce new

evidence. There was no application made under Rule 15(2A) explaining why that evidence could not have been submitted earlier. Nonetheless, I permitted Mr Hussain to refer to it and Mr Whitwell addressed that evidence in response (even though he did not have it until the start of the hearing). I deal with that further evidence below so far as is appropriate given the stage which this appeal has reached, referring to these additional documents as [ABS/xx]).

11. Having heard submissions from Mr Hussain and Mr Whitwell, I indicated that I would reserve my decision and provide that and my reasons in writing which I now turn to do.

## **DISCUSSION**

12. As indicated above, the Appellant pleaded her own grounds which bear little relation to the reasons why permission was granted. Mr Hussain understandably adopted the reasons given by Judge Chowdhury for granting permission rather than what was said by the Appellant in her grounds.

13. I begin with the Judge's conclusions about the Appellant's relationship to the Sponsors. The point made by Judge Chowdhury regarding the vulnerability of the Appellant's father is relevant to this as he gave evidence about the documentary evidence which was put before Judge Rodger.

14. I accept that I now have a DNA test report at [ABS/18-22] which appears to corroborate the Appellant's claim to be the daughter of the Sponsors (although given the late stage of its production, I have no indication from the Respondent whether the report is thought to be reliable). It is worthy of note that the DNA evidence is dated 3 December 2020 and was apparently commissioned by a doctor in Bangladesh. In other words, it was apparently sought at the behest of the Appellant herself or the Sponsors rather than her (previous) solicitors. That is relevant because when I asked Mr Hussain to explain why this evidence had not been produced earlier, he said that this was due to a failure by the Appellant's previous representatives. There is no evidence to that effect nor does that explanation appear consistent with the obtaining of the report in Bangladesh with no mention of involvement of any firm of solicitors. In any event, I am concerned at this stage with the evidence which Judge Rodgers had before her and not evidence which could have been produced but was not.

15. The evidence which Judge Rodgers had about the Appellant's relationship to the Sponsors, other than the witness statements of the Sponsors themselves, was two birth certificates. One which was produced with the Appellant's application is at [RB/29]. It is dated 23 August 2020, was apparently issued by the Sylhet City Corporation and bears a birth registration number, "20029195013607770". The second is at [RB/43] and was produced by the Appellant's father when he applied

to enter the UK in 2017. It shows a date of issue of 28 March 2012. It appears to have been issued by the authorities in Sunamgonj. The birth registration number differs except for the first five digits (the first four of which correspond to the year of the Appellant's birth). The Respondent raised this apparent discrepancy and refused to accept that either document was genuine.

16. The point made by Judge Chowdhury in this regard is that the Judge failed to treat the Appellant's father as a vulnerable witness. I accept in this regard that the Appellant's father received a positive reasonable grounds decision from the NRM on 19 June 2019 ([RB/103]) but I can find no evidence that a positive conclusive grounds decision followed. There is no mention in Mr Islam's statement at [AB/3-5] of this fact. By contrast, Mrs Begum mentions in her statement [AB/6-8] that she and her husband claimed to be victims of modern slavery albeit she says that her and her husband's applications are still awaiting an outcome. There is also supporting correspondence from Lea Campbell, an Outreach Advocate from Hestia in relation to Mrs Begum's status as a victim of modern slavery (at [AB/10-15]) albeit she too says that the claim in this regard had not been concluded (by December 2021). Ms Campbell makes no mention of Mr Islam being similarly assessed. Finally, there is medical evidence in relation to Mrs Begum which refers to mental health issues (at [AB/20-26]). There is no such evidence in relation to Mr Islam.
17. Judge Rodger recognised Mrs Begum's vulnerability as a witness for reasons set out at [13(e)] which I do not need to repeat. There is and can be no complaint about the Judge's treatment of her evidence. Although, as Judge Chowdhury pointed out, Judge Rodger did not refer expressly to the Joint Presidential Guidance Note No 2 of 2010 entitled "Child, vulnerable adult and sensitive appellant guidance" ("the Guidance"), the Judge clearly had that in mind as she accepted that Mrs Begum was vulnerable and determined of her own volition that Mrs Begum should not give oral evidence. The Judge also made plain that she took into account Mrs Begum's written evidence notwithstanding her unfitness to give evidence but noted that the evidence relating to the birth certificates was the same as that given by Mr Islam.
18. Turning back then to Mr Islam, the Judge directed herself as follows at [13(a)]:

"..In considering the sponsor's evidence I have taken into account that there is a finding of reasonable grounds that he is a victim of modern slavery. However, there is nothing within any of the evidence before me which persuades me that any inconsistencies in his account or deficiencies in his evidence is due to any vulnerabilities arising from being a victim of modern slavery and there is no persuasive evidence of any mental health condition suffered by Mr Islam such that would affect my assessment of the credibility of his evidence."
19. Judge Chowdhury referred in her permission grant to the Guidance which she implies requires all victims of trafficking to be treated as

vulnerable. As Mr Whitwell pointed out, that is not entirely accurate. Although footnote 2 within the Guidance does state that “[s]ome individuals are vulnerable because of what has happened to them eg they are victims of trafficking or have sustained serious harm or torture or are suffering from PTSD” that still requires an individualised consideration of the vulnerability which is consistent with the Judge’s approach. Victims of trafficking do not fall within the definition of “vulnerable adult” in the Safeguarding of Vulnerable Groups Act 2006 (although that might arise due to timing of the legislation).

20. In any event, the Guidance continues as follows:

“3. The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole.”

21. The Judge applied that approach in substance even though she did not refer to the Guidance. She considered the absence of medical and other evidence about vulnerability which might impact on Mr Islam’s evidence. It is worth noting that Mr Islam was working in the UK and had been since June 2020. Even now, in his further witness statement which was expressly produced for the hearing before me ([ABS/1-9]) (but is not relevant as part of the error of law consideration) Mr Islam says that being a victim of modern slavery has impacted him physically and mentally but provides no detail of how, and when nor does he produce any medical evidence in this regard.

22. Finally on this point, as I have already noted, the position before Judge Rodger was that the Sponsors both had positive reasonable grounds decisions but neither had a positive conclusive grounds decision and only Mrs Begum was requiring support as a potential victim (on the evidence before Judge Rodger).

23. I do not therefore accept that the hearing before Judge Rodger was procedurally unfair because of the way in which Mr Islam’s evidence was taken. The Appellant was legally represented at the hearing. The legal representative did not ask Judge Rodger to treat Mr Islam as a vulnerable witness although it is fair to observe that he did not ask the Judge to treat Mrs Begum as such despite her obvious vulnerability.

24. Although Mr Hussain in his oral submissions sought to lay the blame for this failure on the previous representatives and indicated that a formal complaint might have been made about those representatives, he was not able to take me to any evidence despite further evidence more generally having been produced only one day prior to the hearing by his own firm. Mr Whitwell drew my attention to the guidance in BT (Former Solicitors’ Alleged Misconduct) Nepal [2004] UKIAT 00311 to the effect that the Tribunal is entitled to expect some evidence about a complaint being made where the negligence of previous representatives is relied

upon. Although, as Mr Hussain pointed out in response, the Sponsors may be vulnerable, that does not explain why his firm has not made a complaint if one is warranted nor why, if they have, no evidence has been provided in that regard.

25. Returning then to the findings about the birth certificates, as Mr Whitwell pointed out, the evidence about these did not focus mainly or exclusively on the evidence of Mr Islam. The main evidence was the birth certificates themselves. On the face of those documents, they bear different dates and serial numbers. The Judge also noted at [13(a)] of the Decision that the Appellant's place of birth was recorded differently. Having considered Mr Islam's evidence about the two certificates and rejected that as implausible and not credible, the Judge went on as follows:

"...(b) I also note that the birth certificate registered on 23/08/20 is written in English and at the bottom states that the birth registration number is made up of the year of birth, followed by the 7 digit area code and that last six digits are the person's serial number. The birth registration number on the certificate registered in 2012 has a different number and there is no credible explanation as to why a person's serial number and area code would have changed or as to why a second registration of a birth would have taken place."

26. For the reasons at [13] of the Decision read as a whole, the Judge was entitled to reach the conclusion she did that the birth certificates could not be relied upon as evidence of the relationship and therefore that the Appellant had not satisfied her burden of showing that she is the daughter of the Sponsors.
27. Whilst I accept that the DNA report now produced tends to undermine the Judge's conclusion, there is no confirmation of the validity of that report and in any event, I am presently concerned with whether the Decision contains any error of law. As Judge Chowdhury pointed out when granting permission, Judge Rodger cannot be found to have erred in law for failure to consider evidence which she did not have.
28. I move on then to the evidence about the Appellant's ability to meet the financial requirements of the Rules. As Mr Whitwell pointed out, having concluded at [14] of the Decision that she was "not satisfied that the appellant has been able to establish that she is the daughter of the sponsor and that she ought to have been found to have met the relationship requirement of Appendix FM", Judge Rodger went on to consider the financial requirements at [15] of the Decision. Having set out what the (mainly documentary) evidence showed, the Judge concluded that she was "not satisfied that she was able to meet the financial requirements of Appendix FM or that her parents were in receipt of any qualifying benefits such that the financial requirements were met".
29. Here again, the Appellant seeks to rely on further evidence which it is said shows that the Judge was wrong to find as she did. At [ABS/15-17],

the Appellant has provided a letter from the Department of Work and Pensions dated 25 January 2022. That refers to Mrs Begum having made a new claim for personal independence payment (PIP) on 14 January 2021. That document however does not assist the Appellant for several reasons.

30. First, the document was not before the Judge at either the date of hearing or date of Decision. I accept that it could not have been, because it was not sent until after the Decision.
31. However, second, even if the Appellant were to seek to pray the document in aid as showing that the Judge erred in relation to the situation at the date of hearing or Decision, it does not assist her because it shows that, at those dates, the claim had been rejected and was the subject of an appeal. If the Judge had been appraised of the situation as at the date of hearing and Decision, her conclusion could only have been as it was that the Sponsors were not in receipt of any benefit which would override the need to meet the minimum income threshold financial requirements in Appendix FM to the Rules. Mr Hussain suggested that an adjournment application might have been made given that the situation was uncertain in January 2022. However, that is speculative and given the open-ended situation of an ongoing appeal (which evidence post-dated the hearing and Decision in any event), it is highly unlikely that the Tribunal would have acceded to such an application.
32. Third, and following on from that, although Mr Hussain in the course of the hearing sought to show me a further document confirming that Mrs Begum is now in receipt of PIP which has been backdated, that development did not occur until January 2023 and, as above, cannot therefore impact on the validity of the Judge's finding in January 2022 which accurately stated the position at that time.
33. There is therefore no error in relation to the Judge's finding about the financial requirements.
34. It follows therefore that the Judge did not err in her conclusion that the Appellant could not meet the Rules.
35. Looking then at the position outside the Rules and returning to Judge Chowdhury's grant of permission, the errors thought to be arguable were that the Judge failed to weigh in the balance Mrs Begum's emotional vulnerability and that the Judge failed to consider the possible reasons why the Sponsors were unable to sponsor their daughter to come to the UK earlier because they were victims of modern slavery.
36. I deal with these two points together. At [23] of the Decision, the Judge said this:

"Whilst I have considered the medical records of Mrs Begum and the letters from Hestia and note that they feel that Mrs Begum's problems will be greatly assisted by her being joined by her daughter, they have been



separated for many years as Mrs Begum has lived in the UK since 2014 and overall I do not accept that Mrs Begum's mental health condition is such that amounts to a very compelling or exceptional or weighty circumstance such as to outweigh the strong public interest in a refusal of leave in this case. Mrs Begum is receiving treatment and support in the UK and has the support and care of her husband as well as any care that she may well be entitled to as a resident of the UK and as an accepted victim of modern slavery. I also note that Mr Islam has been accepted as a victim of modern slavery and again there is nothing in Mr Islam's circumstances that amounts to an exceptional circumstance such as to outweigh the public interest in refusal of leave for the appellant to join Mr Islam and Mrs Begum given that she has not proved their relationship and the strong weight to be attached to the fact that she was not able to meet the requirements of the Immigration Rules."

37. The Judge there deals with the fact that the Sponsors had been accepted (at least at reasonable grounds stage) as victims of modern slavery and considers, in particular, Mrs Begum's emotional vulnerability. The Judge found however that Mrs Begum has had and continues to have support from Mr Islam and other organisations (such as Hestia) and medical assistance. That was a finding open to the Judge on the evidence.
38. It is not suggested by the Judge that the fact of the Sponsors not having sought entry clearance for the Appellant at an earlier stage was a negative factor in her assessment. The Judge refers at [19] of the Decision to the evidence she had about dependency as between the Appellant and the Sponsors. Although Mr Hussain criticised that paragraph as failing to consider the position of the Sponsors as victims of modern slavery, whilst that might explain why such dependency was not established, it does not impact on the issue of whether such dependency existed at the date of the hearing. That was the issue which the Judge had to consider. She there adopted an approach which is consistent with the guidance given in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. She reached a finding about dependency which was open to her on the evidence.
39. Further, as Mr Whitwell pointed out, the Judge went on to consider whether there would be interference with family life even if that were accepted to exist ([20]). There is no error of law in her approach in that regard nor with her findings. She also considered the position balancing any interference against the public interest. She took into account as I have already pointed out the emotional vulnerabilities of Mrs Begum. However, Mrs Begum does not depend on the Appellant to deal with those vulnerabilities. She depends on Mr Islam and those other persons in the UK who are already assisting her.
40. Looking at the Judge's reasoning at [19] to [23] of the Decision taken as a whole, the Judge was entitled to reach the conclusion she did at [24] of the Decision. There is no error in that regard.

## **CONCLUSION**

41. The Appellant has failed to identify errors of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed. I appreciate that this conclusion will be particularly unwelcome for this Appellant and the Sponsors as she is now an adult and no longer able to apply to join her parents as a child. However, the issue I had to determine was whether there was any error of law in the Decision made by the Judge below. I have concluded that there was not and there is therefore no reason to re-open the appeal.

## **NOTICE OF DECISION**

**The Decision of First-tier Tribunal Judge Rodger promulgated on 19 January 2022 does not contain a material error of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.**

L K Smith

**Upper Tribunal Judge Smith**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Dated: 10 July 2023