



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002908

First-tier Tribunal No: EA/14705/2021

THE IMMIGRATION ACTS

Directions Issued:

On 10th of January 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

JAYSHRIBEN RAMJI CHARANIYA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER
NEW DELHI

Respondent

Representation:

For the Appellant: Ms Lara Simak of Counsel, instructed by PSA McKenzie Solicitors
For the Respondent: Ms Arifa Ahmed, a Senior Home Office Presenting Officer

Heard at Field House on 19 September 2023

DECISION AND REASONS

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 30 September 2021 to refuse her application for entry clearance as the family member of an EEA national, pursuant to the EU Settlement Scheme (EUSS) and Appendix EU (Family Permit) to the Immigration Rules HC 395 (as amended).
2. The appellant is a citizen of India, born on 26 September 1992. She is 31 years old now. Her sponsor is her mother, Mrs Ramibai Natu, on whom she claims to be financially and emotionally dependent. Mrs Natu is a relevant EEA citizen for the purposes of Appendix EU and the EUSS.

3. **Mode of hearing.** The hearing today took place face to face. A Gujarati interpreter was available for all of the appellant's witnesses. There were some difficulties but nothing of substance. At the end of the hearing, Ms Simak confirmed that she was satisfied with the interpreter and did not wish to raise any concerns.
4. For the reasons set out in this decision, I have come to the conclusion that the appellant's appeal must be dismissed.

Background

5. On 30 September 2021, the respondent refused the appellant an EUSS family permit and refused her entry clearance to rejoin her mother in the UK. He did so because there was no evidence of the appellant's domestic circumstances in India, and the respondent therefore could not sufficiently determine that the appellant could not meet her essential living needs without the financial or other material support of her sponsor mother.
6. The appellant and sponsor had both stated that they had no records of the payments made by the sponsor to support her. The appellant had provided a copy of her own bank statement at State Bank of India, which showed regular deposits, but no reference to those deposits originating with the sponsor.
7. Accordingly, the Entry Clearance Officer concluded that the appellant did not meet the eligibility criteria for an EUSS family permit as a dependent child over the age of 21 of a relevant EEA citizen. The application was refused.
8. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

9. On 24 February 2022, First-tier Judge Agnew dismissed the appeal. Following a direction issued on 9 November 2021, the appellant had submitted a bundle of evidence regarding her circumstances (in good time) but those documents had not been linked to the electronic file.
10. The First-tier Judge noted the absence of any relevant correspondence on the electronic file, and made enquiries as to whether the missing documents had been received, but they were not available to her and she decided the appeal without considering the additional evidence bundle.

Error of law decision

11. On 27 June 2023, I set aside the decision of the First-tier Tribunal for error of law: the First-tier Tribunal had received the documents in good time and albeit unwittingly, the Judge had erred in fact and law in concluding that the appellant had not complied with the direction of 9 November 2021 and deciding the appeal on the basis of the grounds of appeal alone.

12. Ms Ahmed for the respondent conceded that this amounted to an error of law: see *E v Secretary of State for Home Department* [2004] EWCA Civ 49 (02 February 2004) (*E and R*).
13. The appellant wished the respondent to consider her additional documents and to know whether the respondent maintains her refusal of an EUSS family permit on the basis of the factual matrix now shown.
14. After allowing the appeal and setting a date of hearing, I directed that the respondent file a position statement in the light of the overlooked documents, indicating whether she maintained her refusal of leave to enter.
15. I further directed that no additional documents be admitted without the leave of the Upper Tribunal.

Respondent's position statement

16. In her position statement of 10 July 2023, the respondent maintained her position, after considering the bundle of overlooked documents. She did not accept that the appellant's evidence, including her witness statements, adequately addressed the concerns expressed by the Entry Clearance Officer.
17. The respondent considered that the Upper Tribunal was likely to find that the appellant and her witnesses were not reliable or credible, and that the true extent of her circumstances in India had been obscured, or not disclosed. The table of money transfers, even if complete and reliable, was sporadic, extremely limited, and insufficient to discharge the burden on the appellant of showing that she depended on the sponsor for her essential living needs, in whole or in part. The evidence of the appellant and her mother about their reasons for sending cash in hand were not credible.
18. The respondent argued that the appellant had not adduced:
 - (i) Documentary evidence of using the money remittance service in the past to transfer funds;
 - (ii) Independent evidence demonstrating that using a money remittance service had created practical difficulties for the appellant and sponsor; or
 - (iii) Independent evidence demonstrating that 'the small amount involved in the transaction would sustain heavy handling charges of the remittance process', making cash transactions preferable.
19. Having regard to the appellant's financial and social conditions, or health, the respondent was still not satisfied that the appellant had discharged the burden of showing that she could not meet her essential living needs (in whole or in part) without the financial or other material support EEA sponsor.

20. That was the basis on which this appeal came back before me for remaking.

Remaking the decision

Evidence

21. I heard evidence from Ms Ramibai Natu, the sponsor; the appellant's two brothers Kishankumar Ramji (Kishan) and Dipakkumar Ranji (Dipak); and her brother-in-law Jayesh Nanji, all of whom used a Gujarati interpreter provided by the Upper Tribunal.
22. I also had two witness statements from the appellant and statements by two neighbours, Mr Prejmi Bhagvan and Ms Kanta Solanki, a letter from the local community, and documents regarding other siblings in the UK.

Appellant's evidence

23. The appellant has made two witness statements in this appeal. The first, on 15 October 2021, sets out her background. She has lived in the family home in India since she was born in 1992, and her father was economically active until his death in 2013. Thereafter, her mother, the sponsor, took over supporting the family and inherited the house. She took various local employments to sustain the family in India.
24. The appellant had very little training or educational background and never managed to get a job in India. Her lack of education or training, even in her own language, reduced her prospects both of employment and marriage.
25. In 2017, having obtained Portuguese citizenship, the sponsor exercised her EU free movement rights and moved to the UK. She continued to support the family in India, emotionally and financially, but the appellant's siblings all gradually obtained Portuguese citizenship, got married, and settled in the UK.
26. The appellant did not obtain Portuguese citizenship. She remained in India, unmarried and financially dependent on her mother.
27. Her father's estate was not yet settled in India and the utility bills were still in the name of the appellant's late father. They 'will be settled as soon as my mother would be able to stay in India for longer period'. The statement is signed, 'Jayshri R'.
28. The appellant's second statement is dated 8 September 2023. In it, the appellant describes her home village of Vanakbara, which is a remote fishing village, surrounded by sea on three sides, on the Island of Diu.
29. The nearest money transfer agents are 14 km away from Vanakbara. The appellant produces a map to show where they are. The cost of travelling to collect money (about £5) was not financially viable and for that reason, her mother had chosen not to use money transfer agencies.

30. The appellant's brothers Kishan and Dipak, and two of her sisters, Ramila and Bhavna are all settled in the UK, with their respective families. They travel regularly between India and the UK and take cash for her.
31. The appellant spends about £70-£80 a month for food, clothing, medicine, water, electricity and gas, local taxes, mobile telephone and data recharge/top-ups etc. the money her mother sent sporadically was sufficient for her day to day expenditure. Her bank accounts showed no other income.
32. Her bank account showed only three relevant transactions: £100 on 16 July 2016 from her brother Dipak, sent to support the appellant and her mother in India; £500 on 2 September 2016, again from Dipak, to support the appellant and her mother, and £8.90 on 15 March 2020, a cheque provided by her mother, paid in to keep the bank account active. The sponsor and appellant's joint account at Dena Bank showed only a loan of £820, taken by the sponsor to repair the roof of the family home.
33. The appellant was still in India, so I heard no oral evidence from her.

Ms Ramibai Natu (sponsor)

34. The sponsor, who is a Portuguese citizen by naturalisation, gave evidence in Gujarati against her witness statement dated 20 October 2021, prepared for the First-tier Tribunal. the statement is signed with a thumbprint.
35. In her witness statement, the sponsor said that in October 2021, her daughter was 29 years old, an Indian citizen, living in Diu-India. She had five other children: Kajal, who was married and living in India, and Krishnakumar, Dipak, Ramilaben and Bhavnaben, all of whom were settled and living in the UK.
36. The sponsor's late husband, the appellant's father, had been the head of the family until his death in 2013, providing livelihood for all family members. Shortly after his death, Krishnakumar, Dipak, Ramilaben and Bhavnaben moved to the UK and settled here. The sponsor remained in India, looking after the appellant (who was then 19 years old) and herself from limited cash resources which her husband had left behind, for their essential and basic needs.
37. The deeds to the family home were still in his name, as were the utility bills. There were 'boreoartic' (bureaucratic) court proceedings ongoing for the transfer of the house into the sponsor's name.
38. As the cash began to run out, the sponsor got a job as a house maidservant, and was able to provide the basics for herself and the appellant. She later worked for a local fishery company, Jay Fish Lines, sorting and packing fresh fish.
39. In 2017, four years after her husband's death, the sponsor acquired Portuguese nationality, irreversibly renouncing her Indian citizenship. She

then travelled to the UK, leaving the appellant in India. The sponsor began working soon after her arrival, and travelled back to India from time to time to give the appellant cash in hand for her essentially needs. The appellant remained living in her mother's house.

40. The appellant had never been given opportunities of education or training which could lead to employment. She had never been economically active and was waiting for a marriage opportunity to get settled. She had bad luck on that too. The sponsor feared that as an unmarried woman, with limited financial resources, living alone and long-time unemployed, the appellant would be stigmatised, contributing to 'disastrous consequences for the family and its social reputation in the local community'.
41. The sponsor sent money to the appellant, not by bank remittances, but by giving money to visiting family members and friends to pass on. It was cheaper that way: the sums in question were small and the bank charges disproportionately onerous.

42. A table of payments gave the following information:

2017 18 June 2017	£500, taken by brother Dipak
21 July 2017	£500, taken by brother Kishan
2018 29 May 2018	£500, taken by brother Dipak
9 April 2018	£1000, taken by appellant's mother
2019 28 April 2019	£1000, taken by appellant's mother
2020 9 October 2020	£500, taken by brother Kishan
2021 3 July 2021	£500, taken by brother-in-law Jayesh (Bhavnaben's husband)
1 August 2021	£1000, taken by brother Dipak.

The statement is signed by the sponsor with a thumbprint.

43. In oral evidence, the sponsor confirmed her name and approximate address ('near a school in Wembley') but did not know her date of birth. She said that she had been living in the UK, in Wembley, for 5 years. She was tearful, explaining that she was very upset about her daughter.
44. The sponsor had come to court to give evidence and help her daughter, but could not remember making her witness statement and could neither read nor write. She had brought with her a notebook, which she referred to as her 'diary' and passed it to Counsel when she was asked whether she remembered making a witness statement. The 'diary' contained contact details for her sons and details such as her GP's address and telephone number.

45. The sponsor said that her son Kishan and a friend of his had helped her make the witness statement. Kishan had told her what was in the witness statement and she listened to him. She was happy to adopt it as her primary evidence, confirming that to the best of her knowledge, the contents were true.
46. In answer to a supplementary question, the sponsor said that all of her sons and daughters were in the UK. The appellant was alone in India and her mother worried about her. She could not sleep at night.
47. In cross-examination, the sponsor said that she had no paper record of the amounts she had sent to her daughter. Her son-in-law, daughter-in-law, and son took money when they went to India, taking £500-£600 each time, and they would make sure her daughter got the money. The money was for bills and shopping and so on. She pointed to the 'diary' and said the information was written in there. Her son Kishan would write in it, as the sponsor was not literate.
48. The sponsor worked as a school cleaner, earning £1000-£1100 cash in hand. She did not know the name of the school but it might be in the 'diary'. She was not lying about her earnings. She kept some of the money she earned for herself, then gave the rest to her son to give to the appellant, who had never been employed. The sponsor herself had managed to find work in their village, but she did not want the appellant to do that.
49. The sponsor's husband had died around the time the appellant was born. The sponsor had been very depressed, she stayed in bed for two years. She really wanted the appellant with her in the UK. The appellant was alone and lonely in India, and the sponsor could not sleep at night thinking about it. The appellant was about 25 years old now. The sponsor was reminded that in her 2021 statement, she said her daughter was 29 years old, which would make her 31 now. She replied that the appellant was not very experienced.
50. The sponsor confirmed the payments set out above. Payment was always done in cash, as the sponsor did not understand much about banks. She did have a bank account, but her son Kishan operated it for her. He would go and take money out, if she needed it and if there was any left in the bank. There was no money in the bank at present. The money her son, son-in-law and daughter-in-law gave to her daughter was not their money, it was hers. Her daughter normally spent £70-£80 a month.
51. The big payment of £1000 sent in April 2019 through Dipak was a wedding gift for the sponsor's brother's daughter, and was partly for her daughter and partly as a wedding gift to the appellant's cousin, the daughter of the sponsor's brother. The sponsor's brother lived about an hour by transport from the daughter's home. Travel by car or rickshaw was possible but difficult to get. The appellant attended the wedding and had to give money

as a present. The sponsor told the appellant to use a bit of the £1000 for herself, and the rest for the wedding gift.

52. The money sent in July 2021, £500, was not enough for 9 months, given the appellant's £70-£80 expenditure each month. The sponsor would also send £200-£300 if someone else was going to India.
53. The sponsor was asked about a conflict in the reasons given for sending cash between her witness statement and that of the appellant. The appellant said it was because the nearest money transfer agent was far away from her home, whereas the sponsor said that money transfers were expensive and you had to pay a charge to convert pounds sterling to Indian rupees. The cost was about £4-5 for each transfer, and in addition, the appellant would have to pay for a 14km journey to the money transfer agency, which was very, very far, 26 minutes by car.
54. In answer to questions from me, the sponsor said that the appellant was not really waiting for a marriage, as there were not many nice boys in the village, and she would only be married if the groom was very good. The sponsor's brother in India was not really helping with this.
55. The sponsor and her UK-based children had all successfully claimed Portuguese citizenship. Her daughter now had a case before the Portuguese court for citizenship, but the sponsor did not know whether she would be successful in getting citizenship. The sponsor did not know how she herself had qualified for Portuguese citizenship. She did not know if a Portuguese citizenship application had been made for the appellant.
56. In re-examination, the sponsor said that the appellant was not engaged to be married. So many of the grooms were not nice and did not do anything. There was no specific boy whom the appellant would like to marry. In common with everyone else, the sponsor and her brother were looking for grooms, but not actively. She repeated that the available grooms were not nice.
57. Ms Simak asked the sponsor what would happen to the appellant if she did not send the cash payments. The sponsor did not understand the question: first, she replied that it would be nice if the appellant could come to the UK, then that the appellant needed the money, and finally, that the appellant would ask the neighbour for money and give it back when the cash next came.
58. That completed the sponsor's evidence.

Kishankumar Ranji (Kishan)

59. Kishan gave his evidence via a Gujarati interpreter. He adopted his witness statement. The interpreter and witness confirmed that they could understand one another.

60. In his brief witness statement, Kishan said that the appellant was his sister, that she was unmarried and financially dependent on the sponsor, his mother, and that on 11 June 2017 and 9 October 2020, the sponsor gave him £500 in cash to take to India and give to the appellant, his sister, which he did.
61. Answering a supplementary question about what would happen if the money did not reach his sister, he said that she would be alone and would not survive. The place where money transfers could be had was 23 minutes by car, and the only people who could go, if they did not have their own car, were those who could pay, otherwise it was a long wait.
62. Asked about the Portuguese citizenship issue, Kishan said that when they had applied for a Portuguese passport for everyone else, they had not done the paperwork for his sister. He was asked why not, and replied that everything had been done. The court case had gone on for a long, long time but had now ended. The Portuguese authorities did not process the application and now they had left it.
63. Kishan was tendered for cross-examination. He confirmed that his mother banked with Barclays but did not operate her bank account herself. She gave him money in cash for his sister. She used to do school cleaning work at St Joseph's and was paid in cash, and she also cleaned in a house and in a nursery, each being 2, 3 or 4 hours a week. She earned between £1000 and £1200 a month from all these activities. Her work at the school was through an agency, and the agency paid cash.
64. Kishan confirmed that he managed his mother's bank account but could not give a reason why no bank statements had been provided. If the Tribunal wanted to see them, he could provide the statements, there was nothing there which his mother did not want the Tribunal to see.
65. The sponsor is illiterate. The 'diary' she brought to the hearing contained telephone numbers, GP's address and so on. The sponsor could not read them, but if she needed to refer to a telephone number or address, she would just give the 'diary' to the other person.
66. Kishan confirmed that the money he took to India was all given to his sister. If it was £500, he added £50 of his own money, 'just for the happiness'.
67. In answer to questions from me, Kishan said the he had prepared the sponsor's witness statement and read it over to her, explaining it before she signed it. He confirmed that part of the 2019 £1000 was for his cousin's wedding gift. Asked what was happening about a husband for his sister, the witness simply said, 'It happens when it happens'.
68. There was no re-examination.

Jayesh Namji's evidence

69. Mr Namji is the sponsor's son-in-law and the brother-in-law of the appellant. He also gave evidence through the Gujarati interpreter. He adopted his witness statement as his primary evidence.
70. The statement was in the same format as that of Kishan. Mr Namji confirmed that the appellant was his sister-in-law and that she was unmarried and financially dependent on the sponsor. He took £500 from the sponsor to the appellant, in July 2021, and handed it over as requested. No supplementary questions were asked.
71. In cross-examination, he confirmed that he had taken £500 to India for the appellant, in July 2021. He only did it just that one time, and the money was the sponsor's, not his.
72. In July 2023, the whole family had travelled to India and stayed with the appellant. They went for his own sister's wedding. His own parents and brother were also living in India, but all of the appellant's family were here in the UK. She did have her maternal uncle, but his health was poor now. Their uncle also had a son, who still lived in India.
73. There was no re-examination.

Dipakkumar Ramji (Dipak)

74. The final witness was Dipak, who gave evidence through a Gujarati interpreter. He also is illiterate and could not explain how he knew the contents of his witness statement, which had been prepared by his brother. He had no memory of its contents. I did not admit the witness statement into evidence on that basis.
75. In answer to supplementary questions from Ms Simak, he said that he knew he had made a witness statement and that this appeal was 'in the court'. He had made three trips to take money to his sister, two with £500 and one was £1000, including the wedding gift. He had no education in India, not even primary school, so he was struggling to speak English.
76. In cross-examination, Dipak said that his brother Kishan had prepared all the witness statements for this hearing, with the help of a friend whose name Dipak could not recall. He confirmed that the money he took to India was the sponsor's, not his own, and that the sponsor worked 2, 3 or 4 hours at a school. He had only a sister in India and no other relatives except his maternal uncle, who had a daughter and a son.
77. There was no re-examination.

Other witness statements

78. There were three other witnesses, who did not attend and were not cross-examined. That diminishes the weight I can give their evidence, save where it is uncontroversial, or is corroborated by that of other witnesses whose evidence was tested.

79. **Mr Premji Bhagvan Bariya** is a fisherman in Vanakbara, and lives very close to the appellant's family home, on the same street. He has known the family for over 20 years. He has given whatever support he can, emotionally and financially, to the family as their good friend. He confirmed that the appellant's father died 'many years ago' and that he knew how hard the sponsor had struggled to raise her children alone. The sponsor's daughter Kajal married and settled in the town of Daman, with her husband.

80. Mr Bariya says that the sponsor and her other children visit the appellant regularly and that she still lives in the flat inherited by the sponsor. He asserts that they bring 'the support to pay for all of her day to day living costs' and that the sponsor moved to the UK 'reluctantly' due to her economic situation, leaving the appellant behind on her own. He concludes by saying that:

"It is extremely difficult for a single, lone and unemployed female to live and survive on her own in the suburban village without proper support system around her. If the support from [the sponsor] was not available, she would fall in destitute. "

81. **Ms Kanta Jashavant Solanki** also lives on the same street and has a very good relationship with the sponsor's family. The appellant's late father was a fisherman and provided for the whole family by his work. After his death, the sponsor had to provide for her five children. Kishan and Dipak helped their mother and contributed to the maintenance of the family until they each married and moved to the UK to start their own families. The three daughters married and moved away, one to Daman in India, and the other two to the UK, along with their families and children.

82. The sponsor had difficulty finding suitable work in India with which she could provide for the appellant and herself, so she moved to the UK, leaving the appellant behind. The sponsor continued her unconditional emotional and financial support for the appellant, who still lived at the family home which the sponsor inherited from her late husband.

83. The statement concluded:

"In the absence of [the sponsor], she has requested me to keep an eye on the wellbeing of her daughter [the appellant] and help her if she is in need of any support in her day to day life. I keep in touch with [the appellant] every day and give her the moral and emotional support she needs."

84. **Shree Vanakarpa Koli Gnati**, a Vanakbara community organisation, confirms that the appellant is a member of the local religious community. Their letter continues:

"It is well known in our community that [the appellant's] father has passed away. Her mother [the sponsor] and almost all of her siblings have moved to the UK permanently leaving behind, [the appellant], their only household member.

It is also commonly known that her mother [the sponsor] continues to support [the appellant] emotionally and financially from the UK by paying her regular visits-we believe that if this support was not available she will face real hardship being a lone single unemployed woman.

This letter was issued on the request of [the appellant].”

85. The remaining documents are evidence of the appellant’s sister Bhavnaben Ramji’s EUSS pre-settled status, a map of the appellant’s home area, and photographs from the fish market, as well as passport copies for each of the witnesses.

86. I reserved my decision, which I now give.

Submissions

87. The written and oral submissions are a matter of record and need only be summarised here. I have access to all the materials which were before the First-tier Judge as well as the witness statements of the various witnesses, the oral evidence, and the parties’ oral and written submissions.

88. For the respondent, Ms Ahmed relied on the refusal letter of 30 September 2021 and her position statement. She reminded me that this was not an EEA application but an application under the EUSS and that the applicable guidance was that in Appendix EU, not the Immigration (European Economic Area) Regulations 2016. It was not appropriate to ‘borrow’ from the EEA guidance: the EUSS was sui generis and was the correct regime to apply to the facts found in this appeal.

89. The witness statements, prepared by Kishan for all three witnesses, showed evidence of collusion. Ms Ahmed invited me to place limited weight on them.

90. The sponsor loved her daughter and wanted her in the UK. Ms Ahmed invited me to find that she had been willing to lie to achieve that; although her evidence should be treated with sympathy, it was not reliable or credible evidence. No cogent reason had been provided for her failure to provide her bank statements. That lack of candour should be given weight. The sponsor had been an evasive and nervous witness.

91. The appellant was 31 years old now and it was not credible that she had never worked or married. The evidence produced was not sufficient to establish her dependency on the sponsor. The payments claimed to have been made were sporadic and insufficient to meet the appellant’s monthly expenditure, which was said to be of the order of £70-£80 in her 2021 EUSS visa application. There were no money transfers.

92. The letters from friends and other bodies were self-serving, issued at her request. They should be given no weight. The late disclosure that the appellant had an uncle and two cousins still in India added to doubts about her credibility.

93. The sponsor's oral evidence about payment in cash for her school cleaning activities, at a school the name of which she could not remember, was a device to avoid producing the bank statements and allowing the Upper Tribunal to see whether cash had been withdrawn as claimed. Overall, Ms Ahmed invited an adverse credibility finding on the sponsor and the other family witnesses.
94. For the appellant, Ms Simak reminded me that the identity and familial links of the appellant and sponsor were not in dispute. Only the question of dependency on the sponsor was in issue and the reason for such dependency was not relevant. She recognised that the burden of proof was on the appellant and reminded me that oral evidence can be sufficient: see *SM (India) v Secretary of State for the Home Department* [2009] EWCA Civ 1426.
95. The EEA guidance had not been revoked and should guide the outcome of the present appeal. If the Tribunal were unable to 'borrow' that guidance, then it was necessary to rely on caselaw.
96. Ms Simak invited me to accept the sponsor's evidence about her employment as a cleaner in a private household and a nursery school. The evidence regarding payment in cash was credible: the sponsor was illiterate and her son Kishan operated her bank account for her. The work was through an agency, who had procured an agreement to pay in cash.
97. The evidence regarding other family members in India was not relevant: they did not constitute an alternative source of income for the appellant. Her brother-in-law's family had no responsibility for the appellant, and if in financial difficulty, the evidence was that she borrowed money from neighbours, not her maternal uncle. It was right that the appellant had attended the wedding of her maternal cousin, organised by the maternal uncle, and brought presents. That was not enough to set aside the evidence that she was dependent on her mother.
98. The electricity, gas and water bills had been produced: that was enough to demonstrate reliance on the funds, which was all that was required. The appellant only needed to show that she would be in difficulty without the funds sent by the sponsor: see *Reyes* (Judgment of the Court) [2014] EUECJ C-423/12 (16 January 2014) and *Reyes* [2013] UKUT (IAC) 000314.
99. The transfer of funds in cash by various people could suffice: see *Moneke (EEA: other family member)* Nigeria [2011] UKUT 341 (IAC).
100. Ms Simak invited me to find the evidence of the other family members to be frank and credible, coherent and consistent. In the appellant's circumstances, sending money in person was more suitable. The cost of going to collect it (about £5) was a chunk of money that the sponsor would rather not waste. Nothing in the witnesses' account was implausible or lacking in credibility.

101. Ms Simak accepted that there was some inconsistency in the evidence of the youngest brother, who had been helped by Kishan to prepare his witness statement. He also was functionally illiterate: he had never been educated, and struggled with both reading and writing. His oral evidence was the same as the statement.

102. The appeal should have succeeded and she asked me to allow the appeal.

Conclusions

103. The burden of proof lies on the appellant to show that she is the family member of a relevant EEA citizen, in this case her mother. The EUSS scheme is sui generis: dependency rules in the former EEA Regulations are not applicable and the appellant must succeed under Appendix EU or not at all.

104. In order to bring herself within the definition of a 'child' for the purpose of Appendix EU, she must show, so far as relevant, that she is:

"(b)(i) the direct descendant aged 21 years or over of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen or of a relevant sponsor) or of their spouse or civil partner; and

(ii) ... dependent on (as the case may be):

(aa) the relevant EEA citizen (or on their spouse or civil partner) at the date of application or, where the date of application is after the specified date, at the specified date; or ...

(cc) on the relevant sponsor (or on their spouse or civil partner) at the date of application

'dependent' means here that:

(a) having regard to their financial and social conditions, or health, the applicant cannot, or (as the case may be) for the relevant period could not, meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen ...; and

(b) such support is, or (as the case may be) was, being provided to the applicant by the relevant EEA citizen ...; and

(c) there is no need to determine the reasons for that dependence or for the recourse to that support. ..."

105. The appellant must demonstrate that at the specified date of 31 December 2020 at 11 p.m., she was dependent on her sponsor mother, or that she was so dependent on the date of application, 24 April 2021.

106. Taking the conditions for proving dependency in inverse order, Ms Simak need not rely on pre-EUSS authorities to show that the reasons for that dependence or recourse are irrelevant: that is contained in the definition of 'dependent' at (c).

107. The appellant's sponsor mother must satisfy me that the funds which the appellant received originated with her, not with other family members (see (b) in the definition of 'dependent'). Neither the sponsor, nor Kishan, had taken steps to prove that other than by asserting it in witness statements and oral evidence: there is no corroboration of the source of funds. For example, there is no confirmation from the agency which arranged the sponsor's various claimed employments as to where and what they were, or that she was paid in cash, and if so how much. Nor are there any bank statements for her bank account.
108. Kishan operates the sponsor's bank account for her and drafted all of the (remarkably similar) witness statements for the family witnesses. He did not, however, arrange to make the sponsor's bank statements available to me, nor any other evidence which might have been available to corroborate her claimed income and when she withdrew it to send to the appellant. The explanation for the rest of the family obtaining Portuguese citizenship, but not this appellant, is unsatisfactory. It is no explanation at all, unless there was some reason for the appellant not to claim which has not been disclosed.
109. Even if the source of funds is proved, the appellant also bears the burden of demonstrating that she could not meet her essential living needs without the financial or other material support of her sponsor mother (see (a) in the definition of 'dependent'). There are some bills, but no other evidence of how the sponsor spends the money she receives, or how she pays back neighbours from whom she borrows money, when the amounts do not appear to add up.
110. This appeal turns on the credibility of the oral evidence of the sponsor, Kishan and Dipak, and Mr Namji. The sponsor's evidence was unimpressive and I was concerned that she did not remember making her witness statement, nor could she remember either her own address, her date of birth, or the name of the school where she worked. I was also concerned by the sudden appearance of an uncle and cousins who had not previously been disclosed.
111. The younger brother, Dipak is also illiterate and could not remember the contents of his witness statement, which I was unable to admit. He told me that he remembered his brother preparing it and he told Ms Simak that he knew this appeal was 'in the court'. In oral evidence, he gave the expected confirmation of the trips he made to take money to the appellant. In cross-examination, Dipak said that Kishan prepared all the witness statements with the help of a friend whose name he could not recall. He was vague about his mother's employments. Mr Namji's evidence did not take matters much further.
112. Kishan's evidence was similarly unsatisfactory. He did not explain why his sister was not in the family group which applied for Portuguese citizenship, nor why, when he operates his mother's Barclays bank account, the relevant statements were not before me. He offered to provide them after the

hearing, but the family were on notice of the importance of these statements and there had been ample time for them to be made available for the hearing. Given the ongoing reluctance to disclose the UK banking evidence, it may be that the money sent to the appellant (if it is sent) comes from another family member and not the sponsor.

113. All of the witness statements were drafted by Kishan. The sponsor and Dipak were illiterate and signed their statements with a thumbprint. I have no confidence that they were aware of the contents of their witness statements, particularly in the case of Dipak. I do not find the evidence of the family witnesses credible. I was unable to test the evidence of the appellant, as she was not in the UK.

114. The witness statements from Mr Bariya and Ms Solanki suggest that it is they, not the sponsor, who provide any day to day emotional support which the appellant requires in India. Mr Bariya, a former fisherman colleague of the appellant's late father, said in his witness statement that the appellant has a sister settled in Daman, where she lives with her husband. It is not, therefore, correct to say that the appellant is the only member of her family remaining in India. She also has a maternal uncle and at least one married cousin, whose wedding she attended. I am unable to place much weight on the very general letter from the Vanakbara community organisation, which is self-serving at best.

115. I find that there has been a lack of candour throughout by the family witnesses and the appellant. The appellant has not discharged the burden upon her of showing that she is an over-21 dependent child who at the date of application was unable to meet her essential living needs without the financial or other material support of her sponsor mother.

116. This appeal therefore falls to be dismissed.

Notice of Decision

117. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 3 January 2024