



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

Case Nos: UI-2023-003508  
UI-2023-003509

First-tier Tribunal Nos:  
EA/04163/2021  
EA/04160/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 5 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**EDISON KAJTANI (FIRST APPELLANT)  
NIKOLA KAJTANI (SECOND APPELLANT)  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - GREECE**

Respondent

**Representation:**

For the Appellants: Ms E Doerr, Counsel instructed by Turpin Miller LLP  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**Heard at Field House on 23 July 2024**

**DECISION AND REASONS**

1. The Appellants are citizens of Albania. The first Appellant is the father of the second Appellant. The second Appellant is a child and dependent on the first Appellant. The first Appellant's date of birth is 23 March 1983. The second Appellant's date of birth is 2 December 2012. I will refer to the first Appellant as the Appellant in this decision.
2. On 28 December 2022 the Appellant made an application for a family permit under the Immigration (EEA) Regulations 2016 ("the 2016

Regulations”). Their application was refused by the Entry Clearance Officer on the basis that the Appellant had not provided evidence of his essential needs and that there was no substantial evidence of financial support from his Sponsor in the UK, his sister, Dorina Kajtani, who is an EEA national exercising treaty rights. The ECO was not satisfied on the evidence submitted on the balance of probabilities that the Appellant is dependent on the Sponsor.

3. The Appellant appealed against the decision. His appeal came before the First-tier Tribunal (Judge Row) on 3 November 2021. Judge Row dismissed the appeal. That decision was set aside by the Upper Tribunal (a panel comprising Upper Tribunal Judge Perkins and Deputy Upper Tribunal Judge Juss) on 24 March 2022. The panel found that the First-tier Tribunal erred in law and remitted the case back to the First-tier Tribunal to be reheard de novo.
4. The appeal came before Judge Khurram on 22 February 2023. The Appellants were granted permission to appeal against the decision of Judge Khurram to dismiss the appeal. The First-tier Tribunal (Judge Boyes) granted permission on grounds 1 and 2 and refused permission on ground 3. Judge Boyes found that grounds 1 and 2 are arguable because:-

“There is arguably insufficient reference by the Judge to the contents of the statements and the evidence itself. ... that the absence of reference to said evidence is arguably an error. The financial evidence in this case is crucial. It is arguable that the matters outlined in ground 2 have not properly been dealt with or explained sufficiently so as to allow the appellant to know, properly, why their appeal has failed”.

### **The Decision of the First-tier Tribunal**

5. The judge identified the issue as agreed with the parties as whether the Appellants were dependent on the Sponsor for their essential needs (see paragraph 5).
6. The judge heard evidence from the Sponsor. She adopted her witness statement of 14 February 2023. She was cross-examined about, amongst other things, the Appellant’s financial circumstances in Greece and the financial support provided by her. The judge heard evidence from the Appellant’s mother, Anife Kajtani, who adopted her witness statement of 10 February 2023.
7. The judge directed himself on the law at paragraph 11. He said that he had considered the relevant jurisprudence; Reyes v Migrationsverket (Case C-423/12) CJEU (Fourth Chamber) and ECO Manilla v Lim [2015] EWCA Civ 1383, with regards to “dependency”. The judge said that he also applied the principles in Lim (see paragraph 11).

8. The Sponsor arrived in the UK to join her husband in May 2016 and she was granted indefinite leave to remain (ILR) on 20 July 2021. The judge accepted that the Appellant was diagnosed with schizophrenic paranoia disorder in July 2013 and that he was on medication and struggled with mental health. It was accepted that he receives systematic monitoring and faces challenges every day. The Appellant lives with his son (the second Appellant). He was living with his parents and the Sponsor in Greece before they came to the UK. The Appellant's parents' applications for entry clearance in the UK were successful. They arrived in the UK on 14 March 2021. His father has since returned to Greece in August 2021 where he remains living with the Appellant.
9. The judge set out the Sponsor and the Appellant's evidence. The Sponsor has been sending money to the Appellant and his father. The Sponsor has been sending funds to the Appellant since she arrived in the UK in 2016. She said that she initially sent the Appellant £200-£250 per month but is now sending him on average £400 per month. However, she does not send a fixed figure but sends him what he needs. When she or others visit the Appellant in Greece she gives him £500 in cash. During the last two years she has sent most of the funds through HSBC Bank. The Appellant is dependent on the money that the Sponsor sends to cover accommodation costs, household bills and food. He receives a disability pension in Greece of around £391.50 per month which includes child maintenance for the second Appellant. He spends around £755 per month on essential living costs. He provided an income and expenses table. He cannot meet his living needs on the benefits he receives. The Sponsor's evidence was that the disability pension received by the Appellant is not means-tested. She sees the Appellants every year and they talk daily on the telephone. She said the Appellant pays 10%-20% for his medication.
10. The judge that the Sponsor's evidence was largely consistent with that of the Appellant. However, overall the judge found that the Appellants did discharge the burden of proof regarding receipt of financial provision for dependency of essential needs.
11. The judge found that there are regular monthly transfers from the Sponsor which do not exceed €200 supported by the bank statements of the Sponsor covering the period of January 2022 to January 2023.
12. In respect of an email from MoneyGram sent to the Sponsor on 26 November 2021 advising that there are no transactions found in the whole period requested, while inconsistent with the MoneyGram receipts, the judge attached limited weight the document because "it was not put to the sponsor and does not set out the period requested". The judge took into account the remittance transaction history printed on 25 November 2021 for MoneyGram over a period from March 2018 to January 2021 which he said demonstrated that funds were sent to the Appellant by the Sponsor "on 5 sporadic occasions in varying amounts".

13. The judge said that there were three MoneyGram receipts of funds from the Sponsor to the Appellant from 2021 to 2022 in varying amounts. The judge found that there is a clear disparity between the evidence pre and post the decision. The HSBC advice of debit relate to varying amounts debited from the Sponsor's account to her father from 2019 and more recently in 2021 to the first Appellant. He said that the amount of transfer "is predominately significantly less than that sent to the first appellant more recently". The judge said "I do not consider the frequency and amounts of these transactions to assist the appellants position of being supported since 2016". The judge said "...there is a clear difference in the frequency of remittance prior to the application and decision, to that post decision".
14. The judge found that the more recent transfers were not a "true reflection of the provision of funds for essential needs". The judge took into account that the Appellant was not said to have a significant change in his circumstances over the period. The judge said at paragraph 19 that "without reliable detail of the first appellant's income between 2016 and 2021, in circumstances where there is a paucity of evidence from the sponsor of remittances for that period, the burden has not been discharged".
15. The judge took into account that the Appellant provided a tax declaration for 2021 which was issued on 14 June 2022. The document indicated that he had a taxable income of €7,435 without setting out the specific period covered. The judge said that "It was telling that a similar document had not been provided for the period from 2016 to the date of application/decision". The judge took into account that the pension calculation for December 2022 provided a final amount of €377.63. The judge said that there was no evidence that the figure provided is not means-tested and the judge noted that the earlier pension figures from 2016 onwards were not provided, nor was the Appellant's bank statement for the period 2016 to 2021.
16. The judge said that the issues raised in the ECO's decision "were clear" and that the Appellant had had ample opportunity to address them.
17. In relation to the Sponsor's evidence that she gave funds to the Appellant when she travelled to Greece, the judge found that the evidence of these visits do not cover a significant period, and the judge was not persuaded that the funds would be provided in such "a haphazard way".
18. The judge accepted the Appellant's marriage was dissolved in 2019 which is supported by a court order and a witness statement from his wife. The judge took into account the court order which requires the Appellant's wife to contribute €120 per month towards the upbringing of the second Appellant. The judge said that this had not been addressed by the Appellant and that in any event he attached little weight to the point as it was not put to him.

19. At para 17 the judge said “I am not persuaded that the witness evidence sufficiently discharges the burden in view of the disparity identified”. At para 18 the judge found that there was “a lack of readily available evidence, which I would have expected in the circumstances”.

### **The Grounds of Appeal**

20. There are three grounds. The judge granting permission granted on grounds 1 and 2 only.

#### *Ground 1*

21. The judge did not consider all the evidence including the Appellant’s witness statement, the Sponsor’s witness statement and the Appellant’s mother’s statement. The judge did not assess the Sponsor’s credibility.

#### *Ground 2*

22. The judge accepted some evidence but “totally disregards the financial transactions recorded from 9 January 2017 to March 2018” (pages 259–268, AB).
23. The judge erred in concluding at paragraph 16(d) that he did not consider the frequency and the amounts of these transactions assisted the Appellant since 2016.
24. The judge erred by attaching little weight to the MoneyGram documents (pages 207–208, AB) because the potential inconsistency was not put to the Sponsor and the Appellants cannot be penalised by the judge who failed to address any issue with the crucial evidence.

### **Submissions**

#### *The Appellant*

25. Ms Doerr made submissions relying on her skeleton argument.
26. The judge’s assessment of the evidence was flawed for the following reasons:
- (i) The judge failed to make any express credibility findings rejecting the Appellant’s account.
  - (ii) The judge placed undue reliance on the documentary evidence.
  - (iii) The judge placed undue reliance on the difference between the level of documentary evidence provided in relation to the period after the SSHD decision and that before the decision. The Sponsor explained the difficulties in obtaining documentary evidence for historic period given the length of time that has passed since (at para

47 of her statement) and the fact that money was at times paid in cash and to Appellant's parents rather than to him directly. The judge did not explain why he rejected this explanation. The judge's conclusion in relation to this matter was illogical.

- (iv) The central aspect of the Appellant's case is that he is dependent on the Sponsor for his medical care. An entire section of the Appellant's bundle was dedicated to evidence of "medical dependence" and the witnesses confirmed in their statements that the Appellant was dependent on the Sponsor (and his parents, themselves dependent on the Sponsor and living with her in the UK) who provided for his medical care both financially and practically. The judge did not adequately deal with this evidence nor did he provide any reasons for rejecting it.
- (v) The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family. The witness' evidence was that Appellant depended on the Sponsor both financially and in that she provided for his medical care. The judge entirely failed to consider this and the impact that this has on the test of dependency under EU law. The fact-finder accordingly failed to identify one of the most relevant pieces of evidence and give sufficient reasons for rejecting it. The judge only considered this evidence as part and parcel of the Appellant's financial dependency on the Sponsor.
- (vi) The judge draws a number of illogical conclusions from the evidence. He concluded that the increase of Appellant's disability benefit by 1% between 2021 and 2022 undermines the witnesses' account that the benefit is not means-tested. However, one can envisage many reasons for such a small increase in the benefit (e.g. inflation) and it does not rationally follow that this evidence undermines the witnesses' account that disability benefit is means-tested (in fact, the equivalent in the UK, Disability Living Allowance, is also not means-tested given the type of benefit).

### *The Respondent*

27. Mr Melvin relied on the response made under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 of 4 August 2023. In respect of the first ground it is not the case that the judge failed to consider the evidence of the Appellant and witnesses. In relation to the credibility findings the Respondent relies on paragraph 12 where the judge says that the Sponsor's evidence of sending money since 2016 was consistent with the Appellant's evidence and that some areas of the evidence, for example at para 14 where the documentation relied on was not consistent with the witnesses' evidence. The evidence of the Appellant's grandmother and mother did little to add to the evidence of the Sponsor.

28. In relation to ground 2 where it is said that the judge did not take into account the evidence contained within pages 259–268 of the Appellant’s bundle (AB) relating to payments between January 2017 and March 2018, this evidence reveals two payments only, namely the first on 11 August 2017 (page 268, AB) for €900 which does not demonstrate that it came from the Sponsor. There is a second on 13 December 2018 for £100. These payments do not show evidence of support from 2016 onwards. The Respondent relies on “the contextual finding” at para 17 which is said to be relevant because the judge found that the evidence post decision was different to that prior to the application made on 31 December 2020 and paras 18–20 that there was a paucity of evidence in relation to money sent from 2016 onwards and the documents which were expected relating to the Appellant’s evidence and circumstances. This was a point raised by the ECO and was relevant to the question of what the essential needs are and how they are being met outside the resources available to the Appellant. It was open to the judge to find that the Appellants had not discharged the burden of proof. The judge conducted a holistic assessment of the evidence.

### **The Law**

29. Dependence is not defined in the EEA Regulations but it has been considered by the courts on numerous occasions. In the case of Lim v Entry Clearance Officer Manilla [2015] EWCA Civ 1383 the Court of Appeal made clear that the critical question was whether a claimant was in fact in a position to support themselves in order to meet their basic needs without the support from the EEA citizen. If the claimant could support themselves, there was no dependency, even if they were given material support by the EEA citizen.
30. In Latayan v Secretary of State for the Home Department [2020] EWCA Civ 191 the Court of Appeal considered the approach to evidence in such cases:-
- “... dependency does not have to be ‘necessary’ in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity: see SM (India). Nevertheless where, as in these cases, able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. ... 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 Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency”.

31. In the case of Reyes v SSHD (EEA Regs: dependency) [2013] UKUT 00314 the Upper Tribunal said that:-

“Whether a person qualifies as a dependent under the Regulations is to be determined at the date of the decision based on the basis of the evidence produced to the respondent or, on appeal, the date of hearing on the basis of evidence produced to the tribunal”.

32. In Reyes the UT at para 19 referred the Court of Justice’s summary of dependency Jia v Migrationsverket C-1/05 [2007] QB 545 at [35]-[37] paras 35-37:-

“From the above, we glean four key things. First, the test of dependency is a purely factual test. Second, the court envisages that questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family. It seems to us that the need for a wide ranging fact specific approach is indeed enjoined by the Court of Appeal in SM (India): see in particular Sullivan LJ’s observations at [27]-[28]. Third it is clear from the wording of those Articles 2.2 and Regulation 7(1) that the test is one of present, not past dependency. Both provisions employ the present tense (Article 2.2(b) and (c) refer to family members who ‘are dependent’ or who are ‘dependent’; Regulation 7(c) referred to ‘dependent direct relative ...’). Fourth (and this may have relevance to what is understood by present dependency), interpretation of the meaning of the term must be such as not to deprive that provision of its effectiveness”.

33. At para 34 the UT said that the relevant date for deciding whether the requirements of Regulation 7 are met is the date of the hearing.

34. In the case of Moneke (EEA – OFMs) Nigeria [2011] UKUT 0034, drawing on Court of Justice cases such as Lebon C-316/85 [1987] ECR 2811 and Jia v Migrationsverket Case C-1/05; and Court of Appeal cases such as Pedro [2004] EWCA Civ 1358 and SM (India) v Entry Clearance Officer (Mumbai), in Moneke at [41] it was noted that:-

“... dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in SM (India) ... dependency means dependency in the sense used by the Court of Justice in the case of Lebon ...”.

### **Error of law**

35. The Appellants’ skeleton argument strays from the grounds of appeal. Ground 1 identifies a material error. I accept, for reasons that I will explain, that the judge did not consider all the evidence. There is no substance in ground 2. In any event, Ms Doerr conceded that the judge



had considered the documentary evidence of money transfers and receipts but had not considered all the evidence before him and he had not considered the evidence in round.

36. The judge did not make a finding specifically addressing the credibility of the Appellant and witnesses; however, he found that the evidence was not sufficient to discharge the burden of proof. There is no error in this approach. However, when assessing the sufficiency of the evidence, he should have explained why he did not attach weight to the evidence of the Appellant and Sponsor (which he found to be largely consistent) which was potentially capable of plugging the gaps in the documentary evidence pre application/ decision which he found to be lacking. There was evidence from the Sponsor in her witness statement explaining why it had been difficult for her to obtain evidence going back to 2016. Bearing in mind the significance he placed on the quality this evidence the judge should have engaged with this. The judge did not accept the documentary evidence because it was not sufficiently comprehensive pre application/decision and he seemingly did not attach weight to the evidence of the Sponsor and the Appellant for the same reason. What he should have done is to consider the evidence in the round.
37. Moreover, the judge did not take into account the physical and social conditions of the Appellant. It was not challenged that the Appellant was unwell. There was evidence before the judge concerning the Appellant's medical care and dependency for this both physically and practically from the Sponsor. The judge's approach to dependency was not sufficiently wide ranging. The judge did not take into account all the evidence before him when assessing whether the Appellant had discharged the burden of proof. For these reasons ground 1 is made out.
38. I find that the judge inadequately reasoned why it was not accepted that the Sponsor made cash payments to the Appellant when visiting Greece. He did not accept that such payments would be made in such a haphazard way. The judge did not accept that the disability benefit received by the Appellant was not means-tested. He concluded that the increase of the Appellant's disability benefit by 1% between 2021 and 2022 undermines the witnesses' account that the benefit is not means-tested. The conclusions are not adequately reasoned or explained and this leads me to conclude that the inferences drawn by the judge from the evidence are not logical: see SB (Sri Lanka) [2019] EWCA Civ 160 at para 48. I appreciate that this is not a matter raised in the grounds.
39. I set aside the decision to dismiss the appeal. I discussed venue for remaking with the parties who were neutral on the matter. Despite my provisional view expressed at the hearing that the matter should remain in the UT, bearing in mind the history of the case, having considered AEB v SSHD [2022] EWCA Civ 1512 and the need for a fresh hearing, bearing in mind that none of the findings of the judge are sustainable, I have decided that the appeal should be remitted to the FTT.

**Notice of Decision**

40. The decision of the First-Tier Tribunal is set aside. There matter is remitted to the FTT (Birmingham) for a fresh hearing. The appeal should not be heard by Judge Khurram. An interpreter is not required.

**Joanna McWilliam**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 July 2024**