IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-001903
UI-2024-001904
First-tier Tribunal Nos: EU/52141/2023
EU/52142/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of November 2024

Before

UPPER TRIBUNAL JUDGE NEVILLE

Between

1. SYED MOHAMMAD ALI
2. SYEDA FARIDA
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Mr R Layne, Counsel, Legit Solicitors
For the Respondent: Mr N Wayne, Senior Home Office Presenting Officer

Heard at Field House on 8 November 2024

DECISION AND REASONS

1. On 22 May 2022 the appellants, are a married couple living in Bangladesh, applied under the EU Settlement Scheme for family permits as the dependent family members of their daughter and her husband, Mr Rubel Mal. I shall refer to Mr Mal as the sponsor, being the appellants' son-in-law and the person upon whom the appellants claim to be dependent.

2. The application was refused on 4 October 2022, the respondent deciding that inadequate evidence had been shown to establish dependency. Whereas a number of money transfer receipts had been provided, the respondent concluded:

> "This limited amount of evidence you have provided does not prove that you are financially dependent on your sponsor. I would expect to see

substantial evidence of dependency over a prolonged period. This evidence should also show that without the financial support of your sponsor your essential living needs could not be met.

This office would also need evidence of your own domestic circumstance in Bangladesh, for example, bank statements and evidence showing any other income you receive and evidence of all your expenditure. Without such evidence I am unable to sufficiently determine that you cannot meet essential living needs without financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner."

3. The appellants' appeal against to the First-tier Tribunal was dismissed by Judge F Meyler in a decision promulgated on 14 March 2024. The Judge set out the applicable legal framework, noted that she had heard evidence from the sponsor, who had adopted his witness statement, and decided as follows:

> "15. The respondent repeatedly asserted, in both the refusal letter and in the Review, that evidence of the appellants own domestic circumstances was expected. Moreover, the respondent specifically highlighted the failure to provide the appellants' bank statements, showing any other income received. It is quite clear from the money transfers that the first appellant has a savings account (e.g. see pp 603-608) and yet despite repeated and specific requests for the appellants' bank statements, these have not been provided. The sponsor has provided his bank statements and ample evidence of his family's modest circumstances. It is unclear why the appellants have chosen not to disclose their own bank statements in response to the issue repeatedly and specifically raised by the respondent.
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> 16. Based on the failure of the appellants to disclose their bank statements throughout the relevant period of dependency relied upon, I find that the appellants have failed to show, on the balance of probabilities, that they needed the financial support sent by the sponsor."

4. Dissatisfied, the appellants appealed the Judge's decision to the Upper Tribunal on grounds that I can fairly summarise as:

(1) that the Judge dismissed the appeal simply because bank statements have not been provided rather than addressing the actual issue of dependency;

(2) that the Judge had failed to consider other evidence that has been provided; and

(3) that an impermissibly high standard of proof, or other threshold has been applied, given the other evidence that had been provided.

5. Permission was granted by Upper Tribunal Judge Jackson on 10 June 2024. I have heard submissions from both representatives as to whether or not the Judge's decision contains an error of law.

6. This is an appeal against a finding of fact and I bear in mind the appellate caution that must be exercised. In *Clin v Walter Lilly & Co Ltd* [2021] EWCA Civ 136, Carr LJ, as she then was, held as follows:

> "85. In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:
>
> i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence into account, or arrived at a conclusion which the evidence could not on any view support;
>
> ii) Where the finding is infected by some identifiable error, such as a material error of law;
>
> iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.
>
> 86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion."

7. The sole factual issue before the Judge here was dependency. In *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383 the following was stated:

> "[32]... the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights."

8. So, it is not simply provision of money that must be shown but also that this is necessary for the recipients to support themselves. Inevitably, some evidence of the appellants' financial circumstances was required. It is surprising in this appeal that such sparse evidence was provided in support of the point. However, the Rules still do not require any specified type of evidence before dependency can be established, such as may be the case, for example, in applications under Appendix FM of the Immigration Rules.

9. The obligation on the respondent and on the First-tier Tribunal on appeal is to consider all the relevant evidence to reach the relevant findings of fact. Here

the evidence was sparse, but the sponsor's witness statement still made the necessary assertion, for example at paragraphs 7, 13 and 14, when fairly read in context of the issue in dispute. The statement would have been adopted as evidence-in-chief. The Judge's reasoning, as already set out above, begins and ends with the respondent having requested bank statements and the appellant not providing them. It might well have been that the Judge could have rationally found the non-provision of bank statements to justify drawing an adverse inference, such that the sponsor's evidence adopted in his witness statement was disbelieved. Or, she could have given brief reasons why, even if the sponsor's evidence was believed, it was still insufficient to discharge the burden of proof. But she did not purport to reach either conclusion.

10. Mr Wayne has argued that paragraph 16 of the decision is enough, but while the Judge does say that she reaches the finding that the appellants have failed to show on the balance of probabilities that they needed financial support, by reason of the non-provision of bank statements, there is no reasoning as to why those bank statements were necessary by reference to the other evidence. Nor did the Judge reason why the evidence of the sponsor, who was in front of her and ready to answer any questions in clarification or challenge, was to be rejected. I have no doubt that the Judge could have rationally reached either conclusion, given the evidential state in which it was presented, but we are left to speculate. I cannot see that a negative outcome was inevitable, even if it was perhaps unlikely. So, for those reasons, ground 2 is made out. The Judge either disregarded the sponsor's evidence, his witness statement being adopted as oral evidence before her, or failed to explain what she made of it. This is the gap in logic referred to by Carr LJ in *Clin v Walter Lilly* above.

11. For those reasons the Judge's finding is infected by an error of law and must be set aside.

Disposal

12. Applying Part 3 of the Practice Direction and paragraph 7 of the Practice Statement, as explained in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46 (IAC), I consider that the appeal should be remitted to the First-tier Tribunal with no facts preserved. In light of the necessary fact-finding and the appellants having been deprived of a full consideration of their appeal, it would be unfair to further deprive them of the two-tier decision-making process.

Notice of Decision

(i) The decision of the First-tier Tribunal contains an error of law and is set aside.
(ii) The appeal is remitted to the First-tier Tribunal for re-hearing with no findings of fact preserved.

J Neville

Judge of the Upper Tribunal

Immigration and Asylum Chamber

11 November 2024