



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003652

First-tier Tribunal No: EU/53210/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 07 November 2024**

Before

UPPER TRIBUNAL JUDGE RASTOGI

Between

**Ms Maya Begum
(NO ANONYMITY ORDER MADE)**

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Masum of ASM Immigration Services

For the Respondent: Ms Newton, Senior Home Office Presenting Officer

Heard at Field House on 29 October 2024

DECISION AND REASONS

1. The appellant appeals, with permission, the decision of First-tier Tribunal Judge Nixon (“the judge”) dated 19 June 2024 (“the decision”) in which the judge dismissed the appellant’s appeal against the respondent’s refusal of the appellant’s application for a family permit to enter the United Kingdom pursuant to the European Union Settlement Scheme (“EUSS”). The respondent’s decision was made on 20 April 2023.
2. The basis of the appellant’s application was as a dependant parent. Her sponsor was her son-in-law (an Italian citizen). Her husband came to the UK in 2021 following his successful application under the EUSS, also as a dependant parent of the sponsor.
3. Neither the respondent nor the judge found there was sufficient evidence to show that the appellant cannot meet her essential living needs in whole or in part

without the financial or other material support of her sponsor, which is the test for dependency set out in Annex 1 of Appendix EU (Family Permit) of the Immigration Rules.

4. The appellant challenged the decision on the grounds that the judge failed to take into account relevant factors and failed to give adequate reasons when assessing the appellant's dependency upon her sponsor. In granting permission, First-tier Tribunal Judge Dainty found it arguable that the judge had failed to take into account key evidence for example all of the money transfer receipts and the evidence in the appellant's witness statement, and/or proceeded on the basis that there was a requirement for documentary evidence and/or failed to give reasons why the evidence in the witness statement was not sufficient.
5. At the error of law hearing, which took place via CVP, Ms Newton conceded the appeal and submitted that there was in fact sufficient evidence before the judge to justify re-making the decision and allowing the appeal with a view to the appellant being granted entry clearance.
6. At the end of the hearing I allowed the appeal on the basis that the decision contained a material error of law such that it was to be set aside and I re-made the decision allowing the appeal but stated full reasons would follow. It is to those I now turn.

Error of Law

7. At [13] of the decision, the judge referred to only being provided with a number of money transfer receipts from the 8 months prior to the date of application and none after. That is incorrect as the appellant's bundle which was before the judge and which the judge said she had seen [2], in fact contained a bundle of money transfer receipts from the sponsor to the appellant's husband from 2016 to 2020 and then to the appellant from 2021 to 2024 [appeal bundle "AB" 58-87]. In the sponsor's witness statement he explained that he had sent money first to his father-in-law and then to the appellant once he left Bangladesh and that he did so in order to support the appellant who had no bank account and no other form of income or support [AB 41-43].
8. At [15] the judge said "I have been provided with no evidence at all to demonstrate the appellant's own personal circumstances". In making this statement the judge had either overlooked the appellant's evidence at para. 8 of her witness statement [AB48] in which she set out her monthly expenditure or failed to explain why that evidence did not demonstrate the appellant's own personal circumstances. Therein the appellant's expenditure, which comprised the main essential elements of utilities, food, clothing, medical costs, travel and her youngest son's education, amounted to 12,500 BDTK which Ms Newton accepted converted to about £81 per month. The appellant had said in her application form [AB 264] that her sponsor sends her about £100 per month and this is borne out by the money transfer receipts. The judge had noted that aspect of the appellant's case [8] but given the other evidence before the judge, I am satisfied the judge also fell into error at [14] in finding that the appellant's "monthly expenditure must exceed amount sent to her by the sponsor". In arriving at that decision the judge relied on the respondent's submissions about the average monthly living costs in Bangladesh rather than basing the decision on the evidence which the appellant had provided. Given also that the sponsor and appellant both said in their statements that it is from the sponsor's money

that the appellant pays her expenses, the judge was wrong to say at [15] that there is no “evidence at all to show that the sponsor pays for the appellant’s essential daily living needs, either wholly or in part”.

9. Also at [15], the judge appeared to have overlooked the evidence about who owns the sponsor’s home. In fact, both the appellant and her husband at paras. 1 and 9 of their witness statements respectively say that her husband owns her home.
10. I find Ms Newton’s concession rightly made. Taken together, I am satisfied that the judge failed to take into account material evidence and/or failed to give reasons why that evidence was not sufficient to demonstrate that the appellant depended upon her sponsor for all or part of her essential living needs. The decision contains an error on a point of law and is to be set aside in its entirety pursuant to section 12 (2)(a) of the Tribunals, Courts and Enforcement Act 2007 (“the Act”).

The re-making decision

11. In light of Ms Newton’s stance at the hearing (see [5] above), I proceeded immediately to re-make the decision pursuant to section 12(2)(b)(ii) of the Act. There was no longer any opposition to the appeal.
12. Bearing in mind the extensive evidence now available from the appellant as to the money sent to her over a considerable period by the sponsor in an amount which was capable of meeting her expenditure and that she used that money and no other to pay for her essential needs, I am satisfied that it is more likely than not the appellant is able to show that without the financial or other material support from the sponsor she cannot meet her essential living needs (in whole or in part).
13. Therefore I am satisfied the appellant meets the definition of ‘dependency’ as contained within Annex 1 of Appendix EU (Family Permit). The respondent had not taken any other issue against the appellant in the refusal letter and, in any event, there is no longer any dispute between the parties. It follows that I am satisfied the appellant is able to meet the requirements of paragraph FP6 of Appendix EU (Family Permit) such that she is eligible to be granted entry clearance to the United Kingdom.
14. The respondent’s decision to refuse the appellant’s entry clearance is not in accordance with the Immigration Rules and/or is a breach of the appellant’s rights under the Withdrawal Agreement and accordingly it is unlawful.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The decision is re-made and the appeal is allowed.

SJ Rastogi

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 November 2024