



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

Case No: UI-2024-004010

First-tier Tribunal Nos: EU/55972/2023  
LE/02485/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

27<sup>TH</sup> November 2024

**Before**

**UPPER TRIBUNAL JUDGE RASTOGI**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**HELENA BEGUM**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr A Masum, Legal Representative

**Heard at Field House on 4 November 2024**

**DECISION AND REASONS**

1. The Secretary of State is the appellant before the Upper Tribunal but for ease of reference I shall be referring to the parties as they appeared before the First-tier Tribunal. Ms Begum will be the 'appellant' and the Entry Clearance Officer will be the 'respondent'.
2. The respondent appeals the decision of First-tier Tribunal Sweet ("the judge") who in a decision dated 27 July 2024 allowed the appellant's appeal against the refusal of her application for entry clearance.
3. On 12 June 2023 the appellant applied for a family permit to enter the United Kingdom under the European Union Settlement Scheme ("EUSS") as a family member who is dependent on a relevant EEA citizen. By way of a decision dated 3 October 2023, served on 10 October 2023, the respondent refused the

application because the appellant had not supplied any evidence to show she was dependent on a relevant EEA citizen or their spouse or civil partner.

### The First-tier Decision

4. The appeal came before the judge who allowed the appeal by way of a decision dated 27 July 2024. At [2] of the decision, the judge noted that the sponsor was the appellant's grandson (12 years old at the date of the hearing). The grandson is a Spanish national who lives in the United Kingdom with his parents who both reside here with pre-settled status under the EUSS obtained through their relationship with their son (the appellant's sponsor) [6]. The appellant is the sponsor's maternal grandmother and she lives in Bangladesh. The judge found that through the money sent by her daughter and husband she is able to meet her essential needs in Bangladesh. The judge recognised that it was not the sponsor personally providing the money to satisfy the appellant's essential needs but rather it was his parents [6] and [8]. Nevertheless, the judge decided at [8] that the appellant was able to meet the dependency requirement. At [9], the judge concluded the appellant was able to meet the requirements of Appendix EU (Family Permit) as a dependent family member and allowed the appeal.

### The Grounds of Appeal

5. The respondent applied for permission to appeal that decision to the Upper Tribunal on the grounds that the judge materially erred in law when finding that the appellant satisfied the requirements of Appendix EU (Family Permit) despite her dependency not being upon the EEA national sponsor.
6. The respondent relied on the judge's findings at [6] in which the judge said:

"In essence, he is the EU sponsor for the purposes of this application, although the funds have been provided by his parents to the appellant".
7. The respondent also relied upon the last sentence of [8] in which the judge said:

"In respect of the actual sponsor being aged 12, and therefore not able to provide financial support himself, I am persuaded that his family, namely his parents, have provided such support".
8. The respondent submitted that the judge was incorrect in finding that the requirements of Appendix EU (Family Permit) were satisfied through a dependency on third country family members and submitted that compliance with the requirements could only be achieved by the appellant being dependent upon the EEA national sponsor. Therefore, as the judge made an explicit finding that the appellant is not dependent on their EEA national sponsor but instead was dependent upon the EEA sponsor's parents, he materially erred in law in finding the requirements of Appendix EU (Family Permit) satisfied.
9. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 29 August 2024.
10. The error of law hearing came before me and took place over the CVP platform. I was provided with a 176 page error of law bundle. I heard submissions on behalf of both parties and at the end of the hearing I reserved my decision.

### The Legal Framework

11. Paragraph FP3 of Appendix EU (Family Permit) says:

“FP3. The applicant will be granted an entry clearance under this Appendix, valid for a period of six months from the date of decision, by an entry clearance officer where:

(a) A valid application has been made in accordance with paragraph FP4;

(b) The applicant meets the eligibility requirements in paragraph FP6(1), (2) or (3); and

(c) The application is not to be refused on grounds of suitability in accordance with paragraph FP7.”

12. The relevant parts of paragraph FP6 say:

“FP6. (1) The applicant meets the eligibility requirements for an entry clearance to be granted under this Appendix in the form of an EU Settlement Scheme Family Permit, where the entry clearance officer is satisfied that at the date of application:

(a) The applicant is not a British citizen;

(b) The applicant is a family member of a relevant EEA citizen; .....

13. ‘Family member of a relevant EEA citizen’ is defined in Annex 1 of Appendix EU (Family Permit) and the definition includes, at sub-section (d),

“the child or dependent parent of a relevant EEA citizen”.

14. ‘Dependent parent’ is also defined in Annex 1 and the relevant part says:

(a) the direct relative in the ascending line of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; and

(b) (unless sub-paragraph (c) immediately below applies):

(i) dependent on the relevant EEA citizen or on their spouse or civil partner:  
.....

‘dependent’ here means that:

.....

(b) such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) or by their spouse or civil partner” and

.....

in addition:

(a) ‘direct relative in the ascending line’ includes:

(i) a grandparent or great-grandparent; and .....

## Error of Law

15. In addition to the written grounds, Mr Diwnycz relied upon what he described as a '*Robinson obvious*' point, namely that the sponsor is a minor and has no capacity to sponsor the appellant in any event. I do not find it necessary to deal with that issue in light of the way I have decided the grounds as originally drafted.
16. Turning to the written grounds, Mr Masum argued on the appellant's behalf that the judge was entitled to treat the sponsor and his parents as a single family unit, particularly as the sponsor's parents had acquired pre-settled status in the United Kingdom as a result of the sponsor's Spanish nationality. He argued it was open to the judge to conclude that it was the family unit which provided the funds with which the appellant met her essential needs, particularly as the source of the funds came from state benefits payable to the family by virtue of the sponsor in the UK.
17. I respectfully disagree. I am not satisfied it was open to the judge to have made those findings. The judge was quite clear that the financial support came from the sponsor's parents and not from the sponsor [6] and [8]. That means the financial support was not being provided by an EEA citizen but was, in fact, being provided by two third country nationals, namely the Bangladeshi parents of the sponsor.
18. Mr Masum did not take me to any part of Appendix EU (Family Permit) which revealed an ability to rely upon anybody other than the EEA citizen, their spouse or civil partner in order to meet the requirements to be a 'family member of a relevant EEA citizen'.
19. Returning to the legal framework as set out above, in order to meet this part of the Rules, the appellant would have to show that she also met the definition of a 'dependent parent' (to include grandparent) and would have to show that she met the definition of 'dependent'. Applying the judge's findings, the appellant was unable to do so. It follows that, in finding her nevertheless to have done so, the judge fell into legal error by failing to apply the correct legal test to the facts as he found them to be. In other words, I am satisfied the judge misdirected himself in law.
20. Given that this represented the entire issue in dispute between the parties, the judge's error was clearly material to the outcome of the appeal. It follows that the decision is to be set aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). There was no challenge to the facts as the judge had found them to be nor any claim that the error infected those findings. Accordingly, there is not basis to set those findings aside, so all of the factual findings can be preserved.
21. I asked the parties to address me on the re-making decision. Mr Diwnycz submitted that the Upper Tribunal retain the appeal and re-make the decision. Mr Masum's representations were that the question of whether or not the sponsor has capacity to act as a sponsor in these circumstances is a complex matter about which there should be a further hearing, but otherwise did not make any further representations about disposal.
22. I have decided the error of law on the basis of the grounds as originally pleaded and without reference to the '*Robinson obvious*' point of capacity. I have given

consideration to where the remaking of the appeal should take place. In light of the Court of Appeal's decision in *AEB v SSHD* [2022] EWCA Civ 1512, the decision in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and para. 7.2 of the Senior President's Practice Statements and having regard to the extent of the preserved findings, I find the appropriate course is for the appeal to be retained for re-making in the Upper Tribunal pursuant to section 12(2)(b)(ii) of the 2007 Act.

The re-making of the decision

23. Applying the facts as the judge found them to be there can be only one answer to the question of whether the appellant is able to meet the requirements of Appendix EU (Family Permit).
24. The appellant is not dependent upon a relevant EEA citizen for financial support to meet her essential needs. Rather, she is reliant upon the financial support of the sponsor's parents who are not EEA citizens. For that reason, the appellant is not able to meet the requirements of paragraph FP6(1)(b) of Appendix EU (Family Permit) applying the definition of dependent parent within Annex 1 of Appendix EU (Family Permit).
25. It follows that the appellant has not satisfied me that the respondent's decision breaches her rights under the Withdrawal Agreement or is a breach of the Immigration Rules as contained within the EUSS.
26. Therefore the appeal is dismissed.

**Notice of Decision**

- (1) The decision of the First-tier Tribunal contained a material error of law such that the decision is set aside with all findings of fact preserved.
- (2) The Upper Tribunal re-makes the decision and dismisses the appeal.

***SJ Rastogi***  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

25 November

2024