



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/08184/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 October 2015

Decision & Reasons Promulgated  
On 4 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MISS SAMAH KHALIFE  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Mr M Al-Rashid, counsel instructed directly

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge RBL Prior (hereinafter referred to as the FTTJ).
2. No anonymity direction was made by the FTTJ and I can see no reason for making one now.
3. Permission was granted, and an error of law subsequently found on the basis that, primarily the FTTJ fell into procedural error in neglecting to enquire whether the

original documents were available prior to reaching a negative finding in relation to their absence. Furthermore, he erred in his treatment of the evidence relating to an application for an earlier family permit made by the sponsor's mother. The reasons are annexed to this decision.

4. The matter came before me for a rehearing to re-make the decision, with none of the findings of the FTTJ preserved.
5. In advance of the hearing, Carlton Law Chambers hand delivered a consolidated appeal bundle, which included the material before the FTTJ as well as up to date evidence relating to the sponsor's employment and remittances sent to the appellant.
6. I heard evidence from the sponsor, Mrs Khadija Khalife Mroue with the assistance of an Arabic-language interpreter whom she confirmed she understood. She was the only witness.
7. The sponsor provided up-to-date details regarding her employment, hours of work as well as the amount of funds she sent to the appellant in Lebanon. She works 16 hours per week as a cashier in a restaurant, Zyara, where she has worked since February 2015. The sponsor spends £100 month of her income on the support of the appellant, including remittance fees. In addition, she provides separate financial supports for her mother for a similar amount. The sponsor's mother has an outstanding appeal before the First-tier Tribunal following a refusal of her application for a Family Permit.
8. In response to Mr Al-Rashid's questions, the sponsor explained the circumstances in which she had taken over responsibility for the appellant's financial support. In essence, none of her other siblings who reside in the United Kingdom are in a financial position to provide the support the appellant requires.
9. Mr Jarvis indicated that there was no dispute regarding whether the sponsor was a qualified person. His sole submission related to the absence of corroboration of the sponsor's account that her siblings were unable to financially support the appellant. He argued that were I to find the sponsor's evidence to be credible, the circumstances of the appellant were such to meet the requirements set out in paragraph 22 of Reyes [2014] EUECJ C-423/12. Mr Jarvis accepted that the sponsor's evidence tallied with that of the appellant in her witness statements. However, he considered that it was reasonable to expect there to be further evidence of the situation of the appellant's other siblings in the United Kingdom. Mr Jarvis, conceded that if I was not with him in relation to his submission and decided to accept the sponsor's account, in light of the test in Reyes, I would have no option but to accept that dependency met, pragmatically speaking.
10. For his part, Mr Al-Rashid, reminded me that the relevant Regulation was 8 and not 7 as indicated by the ECO's decision. With regard to the lack of supporting evidence as to the position of the appellant's other siblings, he submitted that this went only to the motivation of the appellant and sponsor.

11. Mr Al-Rashid argued that even if there had been a deliberate change of sponsor, in order to gain benefit from the EEA Regulations, it did not change the issue of dependency, which was a question of fact. There was no authority for making additional enquiries where dependency was clearly shown. It was a question of fact whether the appellant needed the sponsor's support for her day-to-day expenses. Even if there were someone else who could provide that support, this does not change the fact that it is the sponsor who is doing the supporting.
12. At the end of the hearing, I indicated that I would be allowing the appeal on the basis that the ECO's decision was not in accordance with the law. My reasons are as follows.
13. There was unchallenged evidence, which showed that the sponsor had been sending funds to the appellant for a period of time, which both preceded and post-dated the ECO's decision. The sponsor also produced current remittance receipts showing that she continued to financially support the appellant as at the time of the hearing before me. The sponsor's evidence made it clear that the financial support of her mother was a separate matter to that of the appellant.
14. Furthermore, the sponsor provided a consistent, detailed and credible account as to the circumstances, which, firstly, led the appellant to require financial support and secondly resulted in the sponsor taking over the appellant's support from their brother, Abbas, who also lives in the United Kingdom. On these matters, I have been guided by what was said in Reyes [2014] EUECJ C-423/12 regarding the necessity of the Member State assessing whether the appellant is or is not in a position to support herself from her own endeavours. Indeed, the sponsor's evidence as to the effect the arrival of Syrian refugees was having on employment opportunities, for people such as the appellant, in Lebanon, was plausible. Furthermore, there was no evidence before me to suggest that the appellant has ever been or is likely to be in a position to support herself financially in the near future.
15. In these circumstances, I accept that the appellant is in a real situation of dependence upon the sponsor who is exercising her Treaty rights in the United Kingdom as a worker.
16. The appeal is allowed on the basis that the decision of the respondent was not in accordance with the law.

### Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision in its entirety and remake it by allowing the appeal.

Signed:

Date: 1 November 2015

Deputy Upper Tribunal Judge Kamara



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/08184/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25 September 2015

Date Sent:

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MISS SAMAH KHALIFE  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Mr M Rashid, counsel  
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge RBL Prior (hereinafter referred to as the FTTJ).

2. Permission to appeal was granted by Designated Judge Garratt on 7 July 2015.

### Background

3. The appellant sought an EEA Family Permit in order to join her sister (the EEA sponsor) in the United Kingdom as her dependant.
4. On 16 June 2014, an Entry Clearance Officer (ECO) refused the said application on the basis that the sponsor was not a qualified person; that the appellant was not dependent upon her sponsor and was not therefore a family member in accordance with "Regulation 7" of the Immigration (European Economic Area) Regulations 2006.
5. The appellant appealed and in her grounds, she argued that the ECO had applied the wrong test of dependency; that documentary evidence of the sponsor's employment was submitted and maintained that she was dependent upon the sponsor.
6. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry on 3 December 2014, however the decision was maintained on all grounds. The ECM maintained that no evidence had been submitted showing that the sponsor was a qualified person or that the appellant was dependent upon her. Reference was made to a visa submission report signed by the appellant, which was said to show the nature of the evidence submitted with the application.
7. The FTTJ did not accept that the appellant was dependent upon the sponsor owing to what was described as the sponsor's incompatible answers with the answers provided by Zahra Mohamad (the mother of the appellant and sponsor) in her application for a Family Permit. Nor was it accepted that the sponsor was a qualified person as there was no documentary evidence of her employment at the time of the hearing. The FTTJ commented that the payslips and P60 were not produced in original form at the hearing and there was no evidence by way of an employer's letter or contract of employment.

### Error of law

8. The grounds of application argue, *inter alia*, that the FTTJ materially erred in failing to have regard to the evidence before him, namely remittance slips, which supported a finding that the appellant was dependent upon the sponsor. It was said that the FTTJ was wrong to rely on a statement made by the sponsor's mother in 2013 in relation to an application made 6 months later. Post-decision evidence of continued employment was submitted with the application. It was also said that the FTTJ did not express any doubts regarding the payslips during the hearing, originals of which the sponsor had in her possession.

9. Designated FTTJ Garratt granted permission to appeal on the basis that the grounds were arguable; it was not clear that the FTTJ considered that the appellant's dependency on the sponsor was later than the statement made by the sponsor's relative in her application and it is arguable that cogent reasons were not given for rejecting the evidence of remittances.
10. The respondent sent a Rule 24 response to the grant of permission, which was received on 16 July 2015. The respondent opposed the appeal; stating that the FTTJ was entitled to conclude that there were inconsistencies; that dependency had not been established and remittances did not establish dependency. It was submitted that the sponsor had failed to provide adequate evidence of her employment and no material error of law was established by providing more cogent evidence after the hearing.

### The hearing

11. At the hearing before me, Mr Jarvis conceded that the FTTJ materially erred in relation to the way the evidence of the application of the sponsor's mother was addressed as well as the fundamental unfairness in not requesting the sponsor's original documents and then drawing adverse conclusions from their absence. Mr Rashid, who was counsel before the FTTJ, confirmed that the sponsor had not been asked to show the original payslips.
12. I conclude that the FTTJ made a material error of law. The parties' mother applied for a family permit in November 2013 and according to the application form, she stated that the sponsor was not supporting anyone else. The FTTJ considered this to conflict with the appellant's application for a family permit, on the basis of dependency on the same sponsor, made six months later and after she says that she was no longer dependent on the sponsor's brother who is a British citizen in the United Kingdom.
13. The FTTJ's reliance on the apparent lack of original payslips, without making any prior enquiry, is clearly procedurally unfair.
14. I therefore set aside the decision of the FTTJ in its entirety and preserve none of his findings.
15. The sponsor attended the hearing and an interpreter had been booked. Accordingly, there ought to have been no reason why I could not have proceeded to remake the decision. Regrettably, the Arabic interpreter did not attend the hearing centre and nor had any communication been received from him. Upon my clerk making enquiries, it transpired that the interpreter had an urgent appointment elsewhere. As it was close to 3pm when this information was received, the prospect of obtaining the services of an alternative interpreter seemed remote

and I therefore adjourned the appeal until 2pm on 23 October 2015 when I would be sitting again.

16. No anonymity direction was made by the FTTJ and I can see no reason for making one now.

### Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

The FTTJ's decision is set aside.

### Directions

The continuance hearing is to be heard by DUTJ Kamara on 23 October 2015 at 2pm.

The time estimate is 1.5 hours.

An Arabic (Middle Eastern dialect) interpreter is required.

Signed:

Date: 26 September 2015

Deputy Upper Tribunal Judge Kamara