Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/04277/2017
EA/04284/2017
EA/04288/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 January 2019	**On 14 February 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

A S FAZLUR RAHMAN CHOWDHURY (FIRST APPELLANT)
FARZANA RAIDA CHOWDHURY (SECOND APPELLANT)
ROWSHON ARA BEGUM CHOWDHURY (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr I Khan, instructed by KC Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Bangladesh. The first and third appellants are husband and wife and the second appellant is their daughter. The first and third appellants appealed to the First-tier Tribunal against the respondent's refusal to grant them an EEA family permit to join Nazmin Islam their daughter in the United Kingdom as the dependent parents of

her husband Bazlur Rahman Chowdhury who is their son. The second appellant appealed against the decision refusing to grant her an EEA family permit to join Nazmin Islam as the dependent sibling of her husband Mr Chowdhury.

2. It was common ground before the judge that the only issue in the case was whether the appellants were dependent upon the sponsor and her husband.

3. The judge noted what had been said by the Court of Justice in Reyes v Sweden [2014] EUECJ C-423/12 that in order for a direct descendant who is 21 years old or older of a Union citizen to be regarded as a "dependant" of that citizen within the meaning of Article 2(2)(c) of Directive 2004/38, the existence of a situation of real dependence must be established. It does not appear to have been controversial in the case that although none of the appellants were direct descendants of Mr Chowdhury the issue in regard to establishing dependency must be the same as that set out in Reyes. It would be enough to show that a Union citizen regularly for a significant period paid a sum of money to [the appellant] regularly for a significant period which is necessary in order for him to support himself in the state of origin.

4. The judge also considered the Home Office free movement rights policy document of 21 April 2017 which in respect of "essential needs" said:

> "If the applicant cannot meet their essential living needs without the financial support of the EEA national, they must be considered dependent even if they also receive financial support or income somewhere else."

5. On considering the documentary evidence the judge accepted that the majority of the income of the first and third appellants was received from their son and his wife. He commented however that unfortunately they had not provided any details regarding their essential needs other than their rent agreement which showed a regular monthly payment of 7,000 taka. The judge noted that the first appellant's income from other sources, according to his bank statement, more than easily covered those payments. There was however no other evidence of payment in respect of essential needs including the second appellant's university fees. She said in her affidavit that her father paid for her university fees from the funds sent by her brother and sister-in-law but there was no evidence whatever of the university fees, nor was there evidence of any travel expenditure or payment of utility bills for which the appellants were responsible, according to the tenancy agreement. The judge concluded that the appellants had not shown that the funds were necessary to meet the essential needs of the appellants and therefore did not meet the criteria for establishing dependency as set down in Reyes and in the Home Office guidance.

6. In the grounds of appeal it was argued what the sponsor had said in oral evidence that the funds went to support his retired parents and/or in-laws to pay for their rent and secondly to pay the fees for the third appellant's education and these were essential needs. As a consequence it was argued that the judge had erred in law.

7. Following the refusal by a First-tier Judge, the application was renewed to the Upper Tribunal, and permission was granted on the basis that it was arguable that the decision was perverse in that the judge had accepted that there was some dependency and there was evidence that the first and third appellants paid their rent and paid for the second appellant's education out of the money received from the sponsor, bearing in mind also that the first and third appellants were retired.

8. In his submissions Mr Khan referred to the evidence before the judge. The sponsor in his witness statement at paragraph 11 said that the money was for the everyday expenses of the appellants. This was repeated in the appellants' son's statement and was also referred to at page 10 in the appellants' affidavit at paragraph 3 as being for essential living needs. There was therefore clear evidence confirming the essential needs and as regards the tenancy the rent was paid by the son according to what was said. The funds in the account to which the judge referred was money previously sent by the sponsor but the appellant was not reliant on that. The policy requirement was satisfied.

9. Mr Melvin had put in the decision of the Court of Appeal in Lim [2015] EWCA Civ 1383 with particular reference to paragraph 32, where it was said that it was a simple matter of fact that if an appellant could support himself there was no dependency even if he was given financial material support by the EU citizen. The facts here were different however, it was argued, as there was evidence of a tenancy agreement and in the affidavit it was said that the appellants were dependent. The judge said there was no evidence of the daughter and paying for her education but evidence had been given about that, that most of the money was sent to her mother for that. There was a material error of law. The policy suggested that although other money was coming in, if the essential living needs were being met that was enough. The judge had not resolved this issue.

10. In his submissions Mr Melvin referred to and relied on the Rule 24 response. It was argued there that the judge had been clearly aware that the appellants did not need to demonstrate entire dependency on the sponsors and the appellants had failed adequately to evidence what their actual essential needs were and the judge had noted an absence of evidence for the university fees and the only other evidence was for rental needs which could otherwise be met from the income not attributed to the sponsors. In essence the judge had found that on the limited evidence available, were the sponsor's remittances to cease, the essential needs would still be met from other sources and this was not an irrational or perverse finding. Mr Melvin argued that Mr Khan was simply seeking to

reargue the case. Reyes had been properly applied and was reinforced by Lim. All the evidence had been taken into account by the judge, who had quoted the guidance. The conclusions were open to the judge. There were clearly other sources of income coming into the appellants' account. Mr Khan was seeking to cherry-pick what money was coming in on the essential needs point. There was insufficient evidence to show the sponsor's remittances showed that the essential needs point was met. There was no material error of law.

11. By way of reply Mr Khan referred to what was said in the policy. Income from elsewhere did not matter. The judge had identified that the money had been remitted but did not consider what was said in the evidence about the money going for the rent. There was no reference to the tenancy agreement.

12. I reserved my decision.

13. The evidence as accepted by the judge was, as noted above, that the majority of the appellants' income is received from their daughter and son-in-law. The judge's concern was that they had not provided details as to their essential needs other than the rent agreement which showed a regular monthly payment of 7,000 taka. The judge noted that the first appellant's income from other sources according to his bank statement more than easily covered those payments. The judge commented however that there was no other evidence of payment in respect of essential needs including the second appellant's university fees, if any. There was no evidence of the university fees or evidence of travel expenditure or payment of utility bills for which the appellants were responsible according to the tenancy agreement.

14. I bear in mind the wording of the extract from the policy that I have set out above that if the applicant cannot meet their essential living needs without the financial support of the EEA national they must be considered dependent even if they also receive financial support or income from somewhere else. I bear in mind that the appellants' rent is paid by the sponsor, and bear in mind also that the first and third appellants are retired. Clearly the expenses of accommodation comprise essential living needs, albeit not all the essential living needs, but in effect the judge found that the living needs other than the rent were being met by the appellants out of the other income. Other than the rent it is unclear how the essential living needs of the appellants are met and that was the essential basis upon which the judge decided that the appeal fell to be dismissed. In my view that was a finding that was properly open to him, and as a consequence the appeal is dismissed.

No anonymity direction is made.

Signed Date 11 February 2019

Upper Tribunal Judge Allen