



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers:  
EA/04260/2021 [UI-2021-001416]  
EA/04266/2021 [UI-2021-001416]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24<sup>th</sup> March 2022**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> August 2022**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**(1) MRS PAPINDER KAUR  
(2) MISS TARANJOT KAUR  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - UKLPA (LIVERPOOL)**

Respondent

**Representation:**

For the Appellants: Mr Zeeshan Raza (Counsel)

For the Respondent: Ms A Ahmed (SPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge J G Raymond, promulgated on 1<sup>st</sup> October 2021, following a hearing at Hatton Cross on 23<sup>rd</sup> August 2021. In the determination, the judge dismissed the appeal of the Appellants, following which the Appellants applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before us.

## **The Appellants**

2. The Appellants are mother and daughter. The first Appellant, the mother, was born on 18<sup>th</sup> March 1984. The second Appellant, her daughter, was born on 16<sup>th</sup> November 2017. Both are citizens of India. Both appealed against the decision of the Respondent Entry Clearance Officer to refuse them leave to enter the United Kingdom as extended family members of a Portuguese national, namely, Gurlal Singh, who was exercising treaty rights in the UK. He is the brother of the first Appellant and the second Appellant is his niece. The Sponsor, Gurlal Singh, lives with his Portuguese national wife, in Hayes, Middlesex, and they have two teenage children themselves.

## **The Appellants' Claim**

3. The Appellants' claim is set out in the first Appellant's witness statement of 12<sup>th</sup> December 2020. In this, she asserts that she has never been able to work because she has been severely disabled from a very young age. She is married to her husband of 50 years of age, who is a farmer but who, because of the COVID-19 pandemic lost his farm workers, fell ill and eventually had to give up farming himself. This being so, there is now a dependency on the first Appellant's sponsoring brother in Hayes in Middlesex.

## **The Respondent's Decision**

4. The Respondent's decision of 3<sup>rd</sup> March 2021 is to the effect that although the first Appellant maintains that a sponsoring brother has resided in the UK since April 2017 and that she is financially dependent on him, only six money transfer remittance receipts have been produced, and these date from September until December 2020. This limited amount of evidence in isolation does not prove that she is financially dependent upon her sponsoring brother. Moreover, there was a lack of detailed evidence of the Appellants' own family circumstances, her income, her expenditure, and the evidence of her financial position, which failed to suggest that she was in need of financial support for her essential living needs.

## **The Judge's Findings**

5. In a detailed determination, the judge comprehensively rejected the Appellants' claim as being fabricated and dishonest. First, it was doubted that the first Appellant was disabled as claimed. There was a certificate of disability dated November 2001 but which consisted of nothing more than "almost illegible handwritten entries." The Grounds of Appeal of 31<sup>st</sup> March 2021 were no less helpful in that they referred to her "disability to work due to paraplegia-paralysis of both lower limbs/one upper limb/bilateral amputation of both hands ...", leaving the judge to say that "it is impossible to see where these details as relating to the first Appellant figure in the certificate" (at paragraph 6). Indeed a handwritten medical sick certificate, which is dated 29<sup>th</sup> July 2021, and issued by Dr Sharma of Hahneman Health Centre in India, has a note at the bottom to the effect "*Note: none valid for legal medical object*" (at paragraph 8), thereby

depriving it of any probative value. Indeed, five copy photographs, including the first Appellant with her family members do not show any degree of disability on the part of the first Appellant or on the part of her husband (at paragraph 9). Yet, in his oral evidence, the sponsoring brother had stated that the first Appellant “is 100% handicapped and cannot move an arm, since six months after she was born, and moves around in a wheelchair” (paragraph 10). This is despite the fact that one of the photographs shows her as a young woman with a 3 year old child.

6. Second, the judge also disbelieved any claim that the first Appellant’s husband had to stop work over the last two years because of the COVID-19 pandemic, rejecting the Sponsor’s evidence before the judge that, “he is 50 years old and has grown old and confined because of COVID, and his arms are feeling tired and he cannot work” (paragraph 24). In fact, there was no medical evidence regarding the Sponsor’s brother-in-law in India.
7. Third, equally rejected by the judge, was the contention that the family in India lived in one room owned by the Sponsor’s brother-in-law where “the roof had fallen down in the monsoon this year” (paragraph 25). However, as the judge observed the remittances sent showed the maintenance of two different households within the family of the first Appellant. There were remittances to the husband of the first Appellant at Jalesar Uttar Pradesh. And, there were remittances for the first Appellant herself to village Chhujapur. This suggests that there was bigger accommodation than just one room to live in. Moreover, the photographs of the extended family with the Sponsor, all smartly attired and well kept, “certainly does not support that evidence of one room accommodation” (paragraph 33).
8. Finally, the judge concluded that a deliberately false picture of dependency had been created. When funds are sent, for example, of £2,144.89 on 12<sup>th</sup> September 2020, they are immediately withdrawn, which suggests that the withdrawal was not needs based as and when that need occurred. Even more remarkably is the fact that on 15<sup>th</sup> June 2021 a remittance is described as “GURLAL SINGH/family maintenance” which shows that this “was clearly intended to lay a false trail of dependency” (paragraph 39). It was also not the case that there was no agricultural activity any longer on the part of the first Appellant’s husband as claimed. This is because there were statements for the two Baroda Bank accounts showing transactions for agricultural activity in May 2020 and March 2021, which was “contrary to the evidence of the Sponsor that the husband of the first Appellant has had to abandon his farming activity” (paragraph 34). All in all therefore, the judge was of the view that, not only had the remittances “been part of an operation to create a false picture of the claimed support by the Sponsor” (paragraph 39), but that “the Sponsor has been dishonest in his evidence, and that his complete lack of credibility as a witness for the Appellants undermines the basis of any merit that their applications could have ... ..” (paragraph 36).
9. The appeals were refused.

### **Grounds of Application**

10. The grounds of application state that the judge made perverse or irrational findings of fact; had failed to give adequate reasons for findings of material matters; had given weight to immaterial matters; and had failed to properly and fairly resolve apparent conflicts in the evidence.
11. On 8<sup>th</sup> February 2022 permission to appeal was granted by the First-tier Tribunal, but with the observation that “it is questionable whether any alleged error by the judge could be said to have had a material effect on the outcome” (paragraph 2).
12. A Rule 24 response by the Secretary of State opposed the Appellants’ appeal on the grounds that the appeal in truth was merely a disagreement with the findings that were open to the judge to make on the evidence. The claim that the first Appellant has effectively been paralysed since the age of 6 months, and was “100% disabled” was a particularly significant claim that needed to be supported by appropriate medical and supporting evidence, which was lacking. The Appellants had to demonstrate the materiality of any errors which they failed to do. This was important because the Appellants’ case is that they have only recently become dependent on their EEA Sponsor. They have therefore not demonstrated prior dependency. There was no evidence that they were previously members of the same household of the Sponsor in India. The decision in **Dauhoo [2012] UKUT 79** was, it was said, against the Appellants.

### **Submissions**

13. At the hearing before us on 24<sup>th</sup> March 2022, Mr Raza, appearing on behalf of the Appellant, began by explaining that the judge’s reasons for the decision began at paragraph 28, where she explained that the remittances amounting to £7,892.37 over a period of nine months spanning 2020/2021, constituted much more than what would be needed to meet the basic essential needs of the first Appellant and her family. However, this matter was not directly put to the Sponsor to enable him to provide an explanation. In the same way the fact that there were two addresses where remittances were being sent may have had a perfectly reasonable explanation if only the matter had directly been put to the Sponsor when he was giving evidence. When we asked the Appellants’ representative, Mr Raza, what the explanation would be, he confessed to not having the answer, explaining that he could not for the time being say what the explanation would be, as he had no instructions.
14. Another point, raised by Mr Raza, was that whereas it was one thing for the judge to say that she did not believe any of the evidence, the suggestion that there had been dishonesty, was to alter the basis of the original decision to refuse the Appellant by the Entry Clearance Officer. This was important because deception is a separate basis for refusal under the EEA Regulations in any event. There were a range of matters that the judge failed to put to the Sponsor and yet these formed the basis of her decision. The Sponsor was never asked why some £2,000 were immediately withdrawn (at paragraph 39) and all at once. He was never asked how the remittances were being used to maintain the family when

sent to two different addresses. However, when we asked Mr Raza once again to explain what difference this would have made, he stated that, “I confess that I do not know the answer to this”. Nevertheless, it was his position that the outcome of the proceedings rendered the decision unsafe. It was an unfair decision, he maintained and it ought to be remitted back to the First-tier Tribunal for a *de novo* hearing with a finding of a material error of law.

15. For her part, Ms Ahmed submitted that she opposed all the Grounds of Appeal as pleaded. This is because they were nothing more than a disagreement with the outcome of the appeal. For example, it was the Appellants’ case that the first Appellant was 100% disabled but the five photographs produced (at paragraph 9) did not show the first Appellant to be remotely disabled. In the same way, whereas remittances were being sent, the judge concluded that they were to supplement an NRE account “as the remittance suggests” (paragraph 30). The medical evidence, insofar as it is documentary, is incoherent and not legible. Against such factual inadequacies, the judge properly applied the law (at paragraph 37) referring to **Chowdhury [2021] EWCA Civ 1220**, which establishes that in assessing whether an applicant qualified as an extended family member, the words “and continues to be” in Regulation 8 had to be read as the persistence of a state of affairs, so that there was a need for evidence of ongoing dependency. This was not the case here.
16. In the same way, in **Rahman [2013] QB 249**, the court pointed out that the obligations in respect of *extended* family members were clearly more restricted than in the case of family members, and the position of other family members is subject to “an extensive examination of their personal circumstances”. Indeed, **Chowdhury** read this to imply the importance of a genuine and stable dependency (at paragraph 41), and the court in **Oboh [2014] 1 WLR 1680** made it clear that the policy of the Directive is not one of family reunion (at paragraph 42). It was therefore difficult, submitted Ms Ahmed, to disagree with the decision below.
17. When we asked of Ms Ahmed whether the conclusion that there had been dishonesty in this case was too harsh, she explained that reasons had been given by the judge as to why this application was a contrivance to subvert the relevant Rules. For example, the Sponsor was asked why remittances were even being sent by a Simran Jeet Kaur of £1,478.35 on 17<sup>th</sup> September 2020 (at paragraph 14), and he had explained that she lived above the residence of the Sponsor and she sent the money when the Sponsor was unable to do so, following which he repaid her. However, Simran Jeet Kaur had not provided a witness statement. The judge was of the view that this suggested “a circulation of assets within an extended family unit” (paragraph 31) rather than a provision of funds for a dependency. However, the manner in which the matter was being presented was as remittances for the essential needs of an extended family in India.
18. In reply, Mr Raza submitted that these are all matters that were not directly put to the Sponsor. The sponsor was not asked about the

circulation of assets within the extended family unit which led to the judge speculating as to the purpose of the remittances. He was not asked about the NRE account (at paragraph 30). He was also not asked about the deposits in the bank account (paragraph 29). In fact, although this was not a matter addressed by the judge specifically, the two family addresses are traceable to the fact that the first Appellant's address is from her passport, whereas the second Appellant's address is from the first Appellant's husband's passport. This could have been probed further by the judge but it was not. The matter therefore needed a far fuller investigation and inquiry, with the Sponsor being invited to address any concerns of the judge before a final decision could be made. For all these reasons, he now asked us to allow the appeal.

## **Discussion**

19. We have considered this appeal on the basis of the findings of the original judge, the evidence before her, and the submissions that we have heard today. We find that there is no error of law on the part of the judge below. For the reasons that we have set out in the body of this determination, it is clear that the judge gave ample explanations for why this appeal was refused. Mr Raza's core point is that without the matters upon which the judge decided being put to the Sponsor at the hearing, it was not possible to know what the answers would have been. However, when we asked him repeatedly as to what the possible explanations could have been for the judge's findings, Mr Raza was not able to say. The arguments put before us are therefore conjectural and speculative. This was an appeal where the first Appellant argued that she was unable herself to work because she had been disabled from a very young age. The only evidence put forward in this regard are five photographs, none of which show her to be disabled, a certificate of disability which does not show that she was unable to work due to paraplegia or paralysis as claimed at the hearing, and a medical sick certificate dated 29<sup>th</sup> July 2021 but which was qualified by a note at the bottom stating "none valid for legal medical object". This was also an appeal where the first Appellant's husband was said to have "fallen ill with severe allergy [and] she has had to give up farming" (paragraph 5), and yet not only is this not evidenced in any way, but there are transactions for agricultural activity both in 2020 and in 2021, which the judge described as a claim "contrary to the evidence of the Sponsor that the husband of the first Appellant has had to abandon his farming activity" (paragraph 34). On top of that, there is nothing here which indicated to the judge that the remittances were being required expressly for the essential needs of the extended family members. As the court explained in **Moneke [2011] UKUT 341** "dependency is not the same as mere receipt of some financial assistance from the Sponsor ...".

## **Decision**

20. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.
21. No anonymity direction is made.

Signed

Date

A handwritten signature in black ink, appearing to read "Saminder Juss". The signature is fluid and cursive, with a large loop at the end of the last name.

Deputy Upper Tribunal Judge Juss

5<sup>th</sup> April 2022