



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

**Appeal Number: UI-2022-
002709
On appeal from
EA/13784/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 28 September 2022**

**Decision & Reasons
Promulgated
On the 09 November 2022**

Before

**Upper Tribunal Judge RIMINGTON
Deputy Upper Tribunal Judge MANUELL**

Between

**Mrs FAKHRA SHAKIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Ms A Nolan, Senior Home Office Presenting
Office

DECISION AND REASONS

1. The Appellant's appeal against the refusal of an EU Family Permit was dismissed by First-tier Tribunal Judge Jepson in a decision and reasons promulgated on 11 January 2022. The judge found, contrary to the view taken by the Entry Clearance Officer, that the Appellant was related to her sponsor (her daughter) as claimed, and that her sponsor was resident in the United Kingdom. The judge found, however, that material dependency had not been shown.
2. The judge observed that "Whilst the refusal letter does not address [dependency] directly, it makes clear that the application has been made on that basis - as a dependent parent... The burden remains on the Appellant to meet the Rules." The judge went on to note that information about the circumstances of the Appellant and her sponsor had not been provided, so reliance on the sponsor for at least some of her essential needs had not been shown. Hence the appeal was dismissed.
3. The Appellant complained in her grounds of onwards appeal that she had not been made aware that dependency was a live issue and she had been given no opportunity to address the judge's concerns. First-tier Tribunal Bird Judge granted permission to appeal on 28 February 2022 on that basis, i.e., that it was arguable that there had been procedural unfairness.
4. Here it should be noted that although the sponsor is present in the United Kingdom and so (it appears) was in a position to give oral evidence, the Appellant had requested that her appeal be determined on the papers. At [3] of his decision the judge had noted that the Respondent had failed to comply with directions and that no Respondent's bundle had been provided. The reality is that the First-tier Tribunal's current procedure rules provide no effective sanction against the Respondent for such default. If the judge had not heard the appeal there would simply have been further delay for the Appellant. It can be seen that the judge was faced with less than ideal conditions.
5. Ms Nolan for the Respondent accepted that procedural unfairness had occurred, as the Respondent had indicated in her rule 24 notice dated 28 June 2022. The Respondent accepted that Judge Jepson's findings as to the familial relationship between the Appellant and her sponsor and her sponsor's presence in the United Kingdom should be preserved, but that the issue of

dependency should be reheard as the Appellant had requested.

6. RM (Kwok on Tong; HC395 para 320) [2006] UKAIT 39 remains good law and Judge Jepson was entitled to ensure that the applicable Immigration Rules were complied with. His decision was a full and careful one. Nevertheless, the Respondent has accepted that procedural unfairness inadvertently occurred, recognising that the refusal notice lacked clarity on the dependency issue and perhaps also that the Respondent had failed to comply with the First-tier Tribunal's directions. For clarity, therefore the issue of dependency is one which will need to be addressed by the appellant.
7. In all the circumstances it is therefore necessary to set aside the decision and reasons for material error of law, and remit the appeal for rehearing in the First-tier Tribunal.
8. They are matters for the Appellant, but it would be sensible for the Appellant (a) to request an oral hearing at which sponsor can give evidence and (b) to provide full evidence as to the Appellant's and sponsor's respective financial positions.
9. The judge's findings as to the family relationship between the Appellant and sponsor, and as to the sponsor's presence in the United Kingdom are preserved. An early date for the rehearing should be found if at all possible, given the delays to which this appeal has been subject.

DECISION

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside, with some preserved findings of fact (see [9], above).

The appeal is to be reheard before any First-tier Tribunal Judge except First-tier Tribunal Judge Jepson.

Signed

Dated 29 September 2022

Deputy Upper Tribunal Judge Manuell