



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

**Case No: UI-2022-003420**

**First-tier Tribunal No:**  
**EA/02591/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 11 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**  
**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**Md Mahamudul Hasan**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr A Swain, Counsel instructed by Emergent Law Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 2 August 2023**

**DECISION AND REASONS**

**Anonymity**

The First-tier Tribunal did not issue an anonymity order. We take into account the principle of open justice and see no reason to make an order, so none is made.

## **Background**

1. The appellant is a national of Bangladesh. He is married to Sania Talukder also a national of Bangladesh. The marriage took place in Bangladesh on 23 December 2020. Prior to the marriage, on 16 December 2020, Mrs Talukder made an application under Appendix EU (FP) of the Immigration Rules to join her Irish national father and sponsor, Mr Md Madul Alam Talukder, in the United Kingdom. On 29 December 2020, six days after he married Mrs Talukder, the appellant applied for an EEA Family Permit to join the sponsor in the United Kingdom as an extended family member.
2. The applications made by the appellant and Mrs Talukder were refused by the respondent on 26 January 2021 and 18 July 2021 respectively, because she was not satisfied they were financially dependent on the sponsor as claimed. Mrs Talukder's application was refused by reference to Appendix EU (FP) of the Immigration Rules and the appellant's in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

## **First-tier Tribunal Decision**

3. The appellant's appeal, and that of Mrs Talukder, against those decisions were heard together by First-tier Tribunal Judge Abdar ("the Judge") on 31 March 2022. For reasons set out in a decision promulgated on 18 May 2022 ("the Decision"), the Judge allowed the appeal of Mrs Talukder, but dismissed the appeal of the appellant.
4. It was common ground before the Judge that the determining issue was whether or not the appellant and Mrs Talukder were dependent on the sponsor. The sponsor gave evidence before the Judge attesting to the claimed dependency. The evidence was that the sponsor sent funds to support his wife and their three children (including Mrs Talukder) when they were all in Bangladesh. The sponsor's wife and their two youngest children joined him in the United Kingdom in July 2019. Mrs Talukder was sent to live with a relative and the sponsor continued to send money to support her alone. The evidence was supported by money transfer receipts dated between 2015 and 8 December 2020 for sums of approximately "£200 and less than £400" (at [17]). This is the basis upon which Mrs Talukder made her application.
5. Before the Judge, Mrs Talukder maintained that notwithstanding her marriage to the appellant she remained dependent on the sponsor. The Judge accepted the evidence and found that Mrs Talukder was, 'if not wholly certainly largely' reliant on the sponsor to meet the costs of her essential needs (at [26]). Accordingly, the Judge allowed her appeal.
6. The Judge then considered the position of the appellant at [20]-[25]. We pause to note here that there was no witness statement from the appellant before the Judge, and so the evidence relating to his circumstances was

limited to the written testimony of Mrs Talukder and the sponsor's written and oral evidence.

7. The Judge noted the sponsor's evidence that the appellant became his dependent upon marrying his daughter and moving in with her at [20], and further noted at [21], the submissions of the parties in respect of the appellant's failure to disclose his bank statements, which the respondent's representative submitted could have demonstrated that the sponsor's support was out of necessity.
8. The Judge's operative reasoning for rejecting the evidence of claimed dependency is as follows:

"22. In cross-examination, the Sponsor was asked if the 2<sup>nd</sup> Appellant works or worked in Bangladesh and the Sponsor denied that the 2<sup>nd</sup> Appellant to have ever worked. I asked the Sponsor, twice, how the 2<sup>nd</sup> Appellant supported himself before the marriage and I find the Sponsor's evidence in reply that the 1<sup>st</sup> and 2<sup>nd</sup> Appellant love each other and the Sponsor does not know how he supported himself prior to the marriage to be evasive and unreliable.

23. It is right that it is irrelevant why the 2<sup>nd</sup> Appellant is dependent on the Sponsor however, the dependency must be out of a need and, on balance, I am not satisfied that the 2<sup>nd</sup> Appellant became dependent on the Sponsor from 23 December 2020 to 29 December 2020 or 31 December 2020, the latter being the exist date, out of necessity (sic). In the absence of reliable evidence on the 2<sup>nd</sup> Appellant's circumstances and bank statements (sic), I cannot find that the 2<sup>nd</sup> Appellant was without alternative means and became reliant on the Sponsor for the 2<sup>nd</sup> Appellant's essential needs from 23 December 2020."

9. The Judge then proceeded to consider the financial remittances post the date of application and refusal. He noted that the sums remitted from the sponsor's modest income were excessive, and for much greater sums than the £150 the appellant and his wife declared that they needed on a monthly basis to meet the costs of their essential needs. The Judge further noted this was almost double the sums sent by the sponsor to his family of four prior to his wife and two children joining him in the United Kingdom in July 2019. The Judge had not received any evidence explaining the reason for the excessive remittances, and whilst he observed the sponsor may have other reasons for remitting the said sums, he did not speculate about that.
10. For these reasons, the Judge was not satisfied that the appellant became dependent on the sponsor out of necessity on 23 December 2020, or at any time thereafter, and accordingly dismissed his appeal.

### **Grounds of Appeal**

11. The appellant's grounds of appeal (not drafted by Mr Swain) are not properly delineated into particularised heads of challenge clearly identifying the legal error. The adopted approach is to present seven

paragraphs over three pages with no clear indication as to where one complaint ends, and another begins.

12. In the initial refusal of permission to appeal the First-tier Tribunal summarised the grounds as asserting, first, that the Judge erred in his approach to whether the appellant became dependent on the sponsor following the marriage and, second, that the Judge's assessment of the financial evidence was unreasonable.
13. Permission to appeal was granted on renewed application by Upper Tribunal Judge Reeds on 27 September 2022. She said:
  - “1. The grounds challenge the FtTJ's assessment of the issue of dependency. It is arguable, as set out in the grounds that the FtTJ erred in his assessment of dependency in relation to the appellant when the evidence before the FtTJ was that the appellant's spouse, who was the 1<sup>st</sup> appellant before the FTT and whose appeal was allowed, was living with the second appellant as his spouse and dependent on the sponsor in same factual circumstances (sic).
  2. It is also arguable as regards the finding at paragraph 22 that there was evidence in the 1<sup>st</sup> appellant's witness statement (paragraph 3) concerning the appellant's previous financial circumstances and support.”
14. The respondent filed a Rule 24 response opposing the appeal dated 3 November 2022.

### **Discussion and conclusions**

15. We turn first to the Decision itself. At paragraph [8], the Judge sets out the relevant part of Regulation 8 of the 2016 Regulations. Two issues arise. The first is whether the appellant is related to the sponsor as claimed. That was not in issue in this appeal. The second is whether there is evidence that the appellant is dependent upon the EEA national. The Judge properly noted at [14], that the sole agreed issue in the appeal was financial dependence.
16. At [15] the Judge correctly identified by reference to applicable case-law that the dependency must arise out of necessity. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EEA national. Those additional resources are not necessary to enable them to meet their basic needs.
17. The Judge was not satisfied that the appellant had made out his case of dependency upon marrying Mrs Talukder for the reasons he gave at [22]-[23], which we have set out above. The Judge's findings were predicated upon his assessment of the sponsor's evidence as “evasive and unreliable”, and the appellant's failure to disclose his bank statements, and were compounded by the evidence of excessive post application financial remittances, which the Judge rejected as evidence of dependency for the reasons he gave at [24], summarised earlier.

18. At the hearing, the parties' addressed their opposing positions in their oral submissions before us. We do not recite the parties' submissions, except where it is necessary to explain our decision. We observe at the outset, however, that Mr Swain did not expressly rely on the grounds of appeal. Given what we say about those grounds below, it is understandable why he focused his submissions on the potential error identified by Judge Reeds in her grant of permission at paragraph one. Essentially, the high-point of Mr Swain's submission is that it was impermissible on the evidence for the Judge to have dismissed the appellant's appeal whilst allowing the appeal of Mrs Talukder when they were living together in the sponsor's household in Bangladesh.
19. Judge Reeds granted permission on all grounds. We turn to consider the grounds, in so far as we understand them, first, in relation to any error asserted in respect of the Judge's findings of fact and, second, whether on the evidence it was open to the Judge to dismiss the appellant's appeal.
20. Paragraph two of the grounds assert that the Judge was "wrong" to find at [22], that the sponsor's evidence was unreliable on the basis that he was unaware how the appellant supported himself prior to his marriage to Mrs Talukder, when in fact:

"it was clearly mentioned in the witness statement of the appellant's spouse and his sponsor that the appellant was supported by his father. The appellant's father died on 05 January 2020 for which the death certificate was also submitted to the tribunal. As the appellant had no other support available after the death of his father, he had to rely on the sponsor for his essential needs."

[our emphasis]

22. We note Judge Reeds in paragraph two of her grant of permission observed that there was evidence of the appellant's previous circumstances, and she referred to paragraph three of Mrs Talukder's witness statement. We have carefully considered the evidence that was before the Judge and we are satisfied that this ground is misconceived.
23. We acknowledge that Mrs Talukder's witness statement at paragraph three states:

" My husband's parents passed away and he was completely dependent on his parents before our marriage."
24. At [12] the Judge stated that he had considered all the evidence whether explicitly referenced or not. We have no reason to believe that the Judge was not mindful of Mrs Talukder's written testimony regarding the appellant's circumstances prior to the marriage. However, this was an entry clearance appeal, and the only live witness evidence the Judge had the benefit of hearing was that of the sponsor. Contrary to what is stated in the grounds, the sponsor does not expressly state in his witness statement that the appellant was previously supported by his father, and nor does the evidence support the assertion in the grounds that the appellant was

supported by the sponsor upon the death of his father. The sponsor's evidence at its highest on the point was:

“ My son-in-law does not work at the moment and his parents also passed away. Therefore, he needs financial support from me as he does not have any other financial support in Bangladesh...”

25. We consider that the reference to “at the moment” infers that the appellant had worked previously, and the evidence did not make clear, that if the appellant became dependent on the sponsor upon marrying his daughter, how he supported himself from the date his father passed away in January 2020 to the date of marriage in December 2020. Mrs Talukder's written evidence did not fill that lacuna in the evidence.
26. Thus, setting out as we do above, the relevant context in which the Judge's findings ought to be assessed, the Judge was clearly not proceeding on the basis that there was no evidence of the appellant's pre-marriage circumstances, had that been the case we recognise that would have been in error, but the Judge was assessing the evidence of the sponsor who had legitimately been challenged on an issue that his written evidence did not address. In the circumstances, we are satisfied that it was open to the Judge to have concerns about the sponsor's evidence and he gave sound reasons for his adverse findings.
27. What would be wrong, in our view, is to consider paragraph [22] in isolation. Like the Judge, who properly considered the evidence holistically (at [12]), his decision should be read as a whole. In doing so, it seems clear to us that the Judge at [22]-[23] had concerns about the sponsor's evidence and the appellant's failure to disclose his bank statements. Consequently, the Judge was not satisfied that the appellant was not without alternative means. There was no dispute the appellant had a bank account in Bangladesh, and in the circumstances it was open to the Judge to consider the reason for non-disclosure. The assertion in paragraph four of the grounds that the appellant “had nothing to hide...” by not providing his bank statements, does not identify an error of law, is a quarrel with the Judge's findings, and is a contention the Judge was mindful of as it was raised before him on the appellant's behalf (at [21]). The Judge was not required to traverse each and every aspect of the appellant's claim, but was required to give adequate reasons for his conclusions to enable the losing party to understand why they have lost. We are satisfied the Judge fulfilled that duty and made findings that are cogently reasoned and were open to him on the evidence.
28. We next deal with the complaint made in paragraph five of the grounds. Here, again, it is argued the Judge was “wrong” to conclude at [24] that the funds remitted by the sponsor of sums between £400-£500 post application and refusal were excessive. The grounds complain that the Judge's conclusion is not supported by the evidence because both the appellant and Mrs Talukder declared in their application that they received £150 and £200 respectively for their essential needs. We do not accept

that the Judge erred in his analysis of the financial remittances. First, taking the grounds at face value as we have not seen the application made by Mrs Talukder, even if the appellant and Mrs Talukder were receiving cumulative funds of £350, this was still less than the £400-£500 being remitted by the sponsor. Second, the Judge was assessing the evidence post application and specifically the funds being remitted between February 2021 to January 2022. The Judge observed the sponsor's modest income, the fact that the remittances were greater than the funds remitted by the sponsor previously to his wife and three children in 2019, and were far greater than the sums the appellant and Mrs Talukder stated they required. The Judge was entitled to rely on all these matters; they were in accordance with the evidence and it was entirely open to the Judge to observe that the excessive remittances may be for another purpose.

29. Last, we turn to what we consider is the high point of the appellant's appeal which was the focus of the appellant's submissions before us. Mr Swain submits that it was not open to the Judge to have dismissed the appellant's appeal whilst allowing that of Mrs Talukder when they were both living in the sponsor's household and their circumstances were the same. Mr Swain placed particular emphasis on Judge Reeds grant of permission almost as if it was a *fait accompli*, but the grant of permission identifies an arguable error of law, not that it is made out. It is for the appellant to persuade us that the Judge materially erred in law.
30. We are not persuaded that the appellant's appeal stood to be allowed with that of Mrs Talukder's. As we have stated above, we find the Judge did not err in his assessment of the facts. Mr Swain referred us to the sponsor's evidence that the appellant and his daughter were in a relationship prior to the marriage, but we do not understand its relevance to the issues as the appellant's case was, and the Judge correctly identified, that he only became dependent and thus an extended family member from the date of marriage.
31. We remind ourselves that the appellant advanced his case before the Judge on the basis of dependency and not, as the grounds appear to infer, on the basis that he was a member of the sponsor's household. We observe nonetheless that the evidence before the Judge was that the appellant and Mrs Talukder lived with a relative in their household and not that of the sponsor's. Accordingly, we confine our consideration to the issue of dependency and the evidence that was before the Judge.
32. On the facts and the evidence, the Judge was not satisfied that the determining issue of dependency had been established by the appellant as the evidence of the sponsor was unreliable; the appellant had not made full disclosure of his financial circumstances and the remittances post-dating the marriage were for excessive amounts. We agree with Ms Isherwood that it matters little what monies were being remitted or for that matter what accommodation was being provided if the Judge was not satisfied that the appellant had no alternative means of support. Whilst we

acknowledge that the appellant and Mrs Talukder are married and were living together in a relative's house (she has now joined her family in the United Kingdom), we consider that the evidence relating to her, most of which was of her pre-marriage circumstances, were different to that of the appellant. The marriage and the subsequent remittances were not of itself, in view of the Judge's findings of fact, conclusive of the issue of dependency.

33. Having considered the decision of the Judge as a whole, we find that the assertion at paragraph six of the grounds that the Judge ignored all the evidence of dependency is unjustified. We are satisfied that the grounds amount to a mere disagreement with the Judge's findings. There is in our judgment no material error of law capable of affecting the outcome of the appeal.
34. It follows that we dismiss the appeal.

**Notice of Decision**

35. The appeal is dismissed. The Decision of the First-tier Tribunal shall stand.

R. Bagral  
Deputy Upper Tribunal Judge Bagral  
Immigration and Asylum Chamber

21 August 2023