



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-000525

First-tier Tribunal No: EA/50857/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 October 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

TANVEER HASAN TIPU
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Mazunder, of Counsel, instructed by Wildan Legal Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Interpretation: Ms D Rashid in Sylheti

Heard at Field House on 12 September 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born on 1st March 1986. He arrived in the UK in March 2010 with a Tier 4 student visa which he extended until September 2016. At this point he overstayed his leave to remain in the UK. The appellant applied for EEA residence cards but was refused in December 2014 and August 2020. He was again refused an EEA residence card as an extended family

member of his cousin Mr Salim Ahmed on 30th November 2020. His appeal against this decision was dismissed by First-tier Tribunal Judge Gaskell after a hearing on the 23rd November 2022.

2. Permission to appeal was granted and for the reasons set out in my error of law decision appended at Annex A to this decision I found that the First-tier Tribunal had materially erred in law.
3. The matter comes back before me now to remake the appeal. The four witnesses all gave their oral evidence through the Sylheti interpreter whom they confirmed that they understood.

Evidence & Submissions- Remaking

4. The appellant contends in his written and oral evidence, in short summary, as follows. He is related as a first cousin to his sponsor, Mr Md Salim Ahmed, and that he was supported by his sponsor whilst living in Bangladesh prior to coming to the UK, and that this is evidenced by money transfer documentation from Western Union. The appellant says that the sponsor chose to do this as he was good and dedicated student and his parents could not afford to support him continuing in his education as they were very poor. Mr Salim Ahmed sent money from Portugal, where he was working in a company to Bangladesh to materially support him. The money from his cousin paid for education related costs which included the school fees, uniforms, books, stationery, travel costs, tutor fees. He continued his education, completing his secondary education and starting university. It is his understanding that Mr Salim Ahmed became a Portuguese citizen in 2000.
5. After the appellant started university in Bangladesh it was an option to travel abroad. He applied firstly for a working holiday maker visa to come to the UK in 2008 but this was refused. His sponsor visited the UK in 2009 and suggested that he should get a student visa for the UK, and that he intended to relocate there. The appellant gave his uncle, Mr Fuhad Ahmed, as the address for this application as he lived in the UK and it was agreed between them that he could do this. He then applied to come to the UK as a student, and his entry clearance was granted in 2010.
6. The appellant's evidence is that when he came to the UK for the first year he went to live with his uncle Mr Fuhad Ahmed, as he was living in the UK and his cousin lived in Portugal at that time. His sponsor, Mr Salim Ahmed still sent him money for his education and other expenses such as travel, books clothing and some food, but Mr Fuhad Ahmed provided accommodation, paid the house bills and some food. His recollection is that Salim Ahmed sent him about £250 every two or three months for his educational expenses. He lived in Mr Fuhad Ahmed at an address in Shadwell

Gardens just for a few weeks after arrival and then he moved with him to Jamaica Street.

7. When Mr Salim Ahmed moved from Portugal to the UK in March 2011 the appellant moved in with him at his address in Elgar Close. He shared Mr Salim Ahmed's home bar for a short period when he move with student friends back to Jamaica Street as he was working on his studies preparing assessment with them between April and June 2014. He evidence is that throughout the period from March 2011 to date Mr Salim Ahmed has given him £50 a week, as also evidenced by his bank statements, by the sponsor, and the sponsor was also clearly covering his accommodation and other costs. In 2015 he and Mr Salim Ahmed moved to Barking Road where they continue to live, although they have lived at two separate flats in this time.
8. The appellant says that he did not tell the Home Office or his bank when he moved from Jamaica Street to Elgar Close because he preferred to keep his important official correspondence going to Jamaica Street as this property was bought by his uncle Mr Fuhad Ahmed so he viewed it as a more secure and permanent address for such things. He therefore used the Jamaica Street address when he made further student applications. He changed his address with the Home Office and his bank to Barking Road when Mr Fuhad Ahmed moved out of Jamaica Street into another property and Jamaica Street became was rented out to tenants. He points to the fact that he has other evidence that he lived in Elgar Close between 2011 and 2014 with Mr Salim Ahmed in the form of letters from other sources such as his college and GP.
9. The appellant says his uncle Fuhad Ahmed did not support him because he had other family responsibilities, and could not afford to do this, where as despite having a family Mr Salim Ahmed was financially able to do so.
10. The appellant's evidence is that Salim Ahmed also paid for his studies at the four colleges (London College of Accountancy, London North College, IMO Bedford College and Universal College) he attended between 2010 and 2014. He accepts that he did not obtain any qualifications from these studies as the colleges all had their licences revoked and in the end he gave up trying to study. The appellant gave no explanation for what he has done in the UK since 2014, a period now of some nine years.
11. The evidence of the sponsor, Md Salim Ahmed, is that he is a dual Bangladeshi and Portuguese citizen. He acquired his Portuguese citizenship in 2001, his having moved from Bangladesh to Portugal in 1991. In 2009 his wife, whom he married in 2001, joined him in Portugal. She remained in Portugal until this time as she was caring for his elderly parents. She was able to stop doing this when

his brother returned from abroad and started a business in Bangladesh and could look after his parents. He naturally sent money to his wife when he was in Portugal and she was living in Bangladesh. He says that he came to the UK in 2011 with his wife and child. He is married, now with two children. He now has EEA settled status.

12. Mr Salim Ahmed says that he has provided support for his essential needs to the appellant since he was 14 years old, in the year 2001, when he got his Portuguese citizenship and visited Bangladesh. The appellant is his sister's son. He did this as he saw that the appellants' parents were and are very poor, and the appellant was a bright student who needed support, and he knew that the appellant would have had to give up his education if he had not stepped in. He considers the appellant like his own child and wanted to give him a good future. When he was living in Portugal money was sent to the appellant via Western Union. He has a few receipts but did not keep them all. They were signed and not sealed, and required a pin number. He provided money for the appellant's secondary and university education which included private school fees and related expenses such as travel, uniforms, school equipment and books. The appellant's parents had a house and land on which they grew food so he did not need to provide money for these things. He also provided some money to the appellant's family.
13. He was aware of the application by the appellant to come to the UK as a working holiday maker in 2008. He had supported this plan as his parents were in a very poor situation. He noted that the appellant's father died in 2021 and a cousin had moved in to the household to provide support. He had arranged for Fuhad Ahmed, who is his uncle as well as the appellant's, to provide an address and support for this application. If the application had been granted he would have come to the UK earlier as he had plans to move to this country, and he visited in 2009 after which he decided he would make this move. He applied for the appellant to come to the UK as a student in 2010 rather than earlier as he needed to get to a certain level, namely university level with a certain level of English, in Bangladesh before this would be possible.
14. After he moved to the UK in March 2011 the appellant lived with him at Elgar Close, a two bedroom rented property, until 2014, bar a short period of time in 2014 when he lived with fellow students at Jamaica Street as he was studying for assessments together with those students. In 2015 they moved together to accommodation in Barking Road, where they both still live with his wife and children. He is aware that the appellant used Mr Fuhad Ahmed's Jamaica Street address as a correspondence address between 2011 and 2014 as it was more secure and permanent

than his rented address. He has covered all of the appellant's living expenses since 2011, and gave him £50 a week as pocket money throughout this period. The college fees were about £2000 per annum. As a result he has covered the majority of the appellant's expenses since he was 14 years old. He says that he is able to support the appellant as he has about £9800 of income left over when all his income sources are considered and his expenses paid, and in addition he has some savings. He says that the appellant tried to get employment when he was a student but was not successful.

15. In the evidence of Mr Fuhad Ahmed is contended in short summary as follows. He is the appellant's maternal uncle, and works as a builder in the UK. He confirms that Mr Salim Ahmed, supported the appellant in Bangladesh, and sponsored his Tier 4 application to the UK, and that the appellant has lived with the sponsor at Elgar Close since the sponsor arrived in the UK in 2011, bar a short period in 2014 when he lived with fellow students at Jamaica Street, until they both moved to Barking Road in 2015. He confirmed that Mr Salim Ahmed works in a restaurant.
16. When the appellant first arrived in the UK in 2010 he lived with him, Mr Fuhad Ahmed, and his wife for a few weeks at Shadwell Gardens and then in Jamaica Street. During this time the appellant did not pay rent or bills, he covered these, and he provided him with food, although sometimes he would say he had received money from Mr Salim Ahmed and would go and do some shopping. When he moved out to Elgar Close with Mr Salim Ahmed, his sponsor the appellant continued to use Jamaica Street as a correspondence address until 2015 as it was more secure than Elgar Close as he owned this property. In 2015 he rented Jamaica Street out and it ceased to be a secure address for important correspondence, and he, Mr Fuhad Ahmed and his family moved elsewhere, so this arrangement ceased.
17. Mr Fuhad Ahmed was aware that his name was given as the address for the failed application for a working holiday maker visa made by the appellant in 2008. His understanding was that he was simply providing an address and that the idea was that the appellant would find work on arrival in this country and also have a holiday. He believed that the appellant had made this application with the encouragement of his sponsor Mr Salim Ahmed so he could see the world and get some work experience, and have a better life. Mr Salim Ahmed had taken responsibility for the appellant as the situation for his family was not good financially. He had not taken responsibility for the appellant as Mr Salim Ahmed did this and he had other commitments. He believed that Mr Salim Ahmed had supported the appellant for a long time and

paid school fees, and that the appellant's schooling would have stopped prior to secondary school if he had not stepped in. The appellant completed up to A level equivalent in Bangladesh and then with Mr Salim Ahmed they decided he should come to the UK to study as that was in his best interests. He is aware that the appellant started a number of college courses but the college licences were revoked and so he never completed a course in this country. He viewed this as bad luck. He was not aware of what he had done since 2014 bar spending time with Salim Ahmed and his family, going to mosque and spending time in the community.

18. Mr Abdur Rahim Mohamed's evidence is, in short summary, as follows. He knew Mr Salim Ahmed as they both lived in Lisbon Portugal between 2001 and 2010. They both originated from the Sylhet in Bangladesh, and their villages were only about 30 minutes apart. When he and Mr Salim Ahmed visited Bangladesh they would take money and gifts for the other one's families. He was aware of the appellant and his family being people who needed money from Mr Salim Ahmed to survive as they lived in poor conditions. He remembers taking money to the appellant's family in 2007, 2008 and 2009. The amounts were between 250 and 400 Euros. He understood the money he gave to the appellant's family was for his education and other costs.
19. The documentary evidence relating to support by the sponsor to the appellant in Bangladesh consists of 14 Western Union slips transferring money from the sponsor to the appellant in 2006, 2007 (3), 2008 (3), 2009(2) and 2010 (2) and two on illegible dates. There is also a letter from Mr Miah at Kushiara Travel, a travel agent, confirming that it was normal for Western Union receipts in this period to have no stamp on them, and that in his opinion they are genuine.
20. The documentary evidence relating to support by the sponsor for the appellant in the UK includes a letters from Universal College dated April 2011 and December 2011 giving the appellant's address as Edgar Close; NHS letters from August 2011, September 2012, March 2013, July 2013 giving the appellant's address as Edgar Close; a letter from SCS re employment from March 2012 giving the appellant's address as Edgar Close; letter from November 2012 from M Bedford re studies to the appellant giving address as Edgar Close; letters from the Fortune Foundation UK re volunteering dated November and January 2013 addressed to the appellant at Edgar Close; letter from the London School of Technology to the appellant dated April 2014 at Edgar Close; counter part driving licence (no date) giving appellant's address as Edgar Close; Boots Bonus card letter (no date) addressed to appellant at Edgar Close; Tesco Club card letter (no date) addressed to appellant at Edgar Close; Iceland Bonus card letter to appellant dated August 2014 giving address as Edgar Close; letter

from the Post Office to appellant redirecting mail from Edgar Close to Barking Road dated August 2018; Barclays Bank statements for 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 showing his address as Barking Road and showing payments from the sponsor; Barclays Bank statement for 2014 and 2015 showing his address as Edgar Close and transfers from the sponsor.

21. Documentary evidence relating to the sponsor is as follows: a June 2022 HMRC letter addressed to him at Barking Road; pay slips for the sponsor for 2021 & 2022; payslips for 2019 & 2020 showing his address Barking Road; Lloyds Bank statements for 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 & 2022 showing his address as Barking Road and transfers to the appellant; Lloyds Bank statements for 2014 and 2015 showing his address as Edgar Close and transfers to the appellant.
22. In the reasons for refusal letter dated 30th September 2020 and in submissions for the respondent from Ms Cunha, it is argued, in short summary, as follows. The appellant applied to come to the UK as a working holiday maker in 2008 and said that his sponsor was said to be his brother, Mr Ahmed Fuhad, which is contradictory to the Western Union evidence that he was being sponsored by the sponsor, Mr Salim Ahmed, and further the Western Union documentation is not certified as genuine by Western Union or in any other way. It is not accepted that the appellant has shown prior dependency for essential living needs on the sponsor Mr Salim Ahmed and it is not contended by the appellant that he ever lived with the sponsor in Bangladesh. Reliance is placed on Sohrab and Ors (continued household membership) Pakistan [2022] UKUT 157, and it is argued that the appellant entering the UK prior to the sponsor creates difficulties. Whilst it is accepted that education might in principle, following the case of Singh v SSHD EWCA Civ 1054, be an essential living need, she argued that in these circumstances it was not because the sponsor had paid for private schooling and this unlike state schooling (which might in Bangladesh require some additional paid for elements) was not essential. In any case she argued that education after the age of 18 years was clearly not essential, and so there was a gap in the provision as the sponsor was only paying for education in Bangladesh for the appellant which was not essential for 6 years, between 2004 and 2010, when he was aged 18 to 24 years, and for a further year in the UK between 2010-2011 up to when he was 25 years old. Ms Cunha drew attention to the fact that in 2008 the appellant had applied to come to the UK to work/ have a holiday, and said that this drew doubt as to whether the sponsor was really supporting the appellant to come to study in the UK in 2010 and thereafter, particularly given that none of the studies undertaken resulted in any qualifications.

23. In February 2010 the appellant made an application to come to the UK as a student giving an address in Great Dover Street, and in April 2010 and November 2013 the appellant made applications to the respondent giving his address as Jamaica Street so, it is argued, there is doubt that the appellant lived with the sponsor at Edgar Close during this time. He did not give his address to the respondent as Edgar Close until 2014. Ms Cunha accepted that we had heard consistent witness evidence that the different addresses simply related to the use of Jamaica Street as a correspondence address between 2011 and 2014 but she said that the position of the Secretary of State remained that the evidence did not suffice to find that the appellant lived with the sponsor during this period of time.
24. At the end of Ms Cunha's submissions I indicated that I accepted from the totality of the evidence (the witnesses and documents) that the appellant had shown on the balance of probabilities that he lived with Mr Salim Ahmed from the time of Mr Salim Ahmed's entry to the UK in March 2011, firstly at Elgar Close and then at the two addresses in Barking Road, and that the Jamaica Street address had been a correspondence address during the period 2011 and 2014 so Mr Mazunder did not need to address me on this issue.
25. In submissions from Mr Mazunder for the appellant, it is argued, in short summary, as follows. He argues that Sohrab simply requires a connection between the appellant and the sponsor. The question is whether the appellant was dependent and not whether he entered the UK prior to the sponsor. It is argued that at the date of the various EEA applications between 2011 and 2019 there is no doubt that the appellant has been a member of the sponsor's household, and it is argued there is strong evidence he is his dependent. With respect to prior dependency it is argued that education is part of essential living needs, particularly as primary education is a fundamental human right, and in Bangladesh it is argued primary education continues until 14 years of age, the point in time when the sponsor started to support the appellant's education. It is argued that in the UK money provided by the sponsor prior to his entry between March 2010 and March 2011 was also for other essential matters such as some food and transport, and material support for these things was also provided.
26. Mr Mazunder argued that it was irrelevant that the appellant had completed no studies in the UK. He reminded the Tribunal that it was not needed that any dependency be out of necessity. He also submitted that the appellant had clearly been a member of the sponsor's household since 2011 to the present day so dependency was not needed as well during this time.

Conclusions - Remaking

27. As per Sohrab a person seeking recognition as an “extended family member” (“EFM”) under regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 must establish a relevant connection with their EEA sponsor in the country of origin, and in the UK. The relevant connection may be through being a dependent of the EEA national sponsor, or through being a member of the EEA national’s household. The relevant connection may change between the country of origin and the UK, as held in Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 79 (IAC). There must not be a break in dependence or household membership from the country of origin to the UK, other than a de minimis interruption. As per Jia v Migrationsverket [2007] CJEU Case C-1/05 the test for dependency is whether the sponsor has and does provide material support for the appellant’s essential living needs. The Court of Appeal in Singh did not determine on the facts of that case whether education was an essential need, as that issue had not been raised before the First-tier Tribunal, but found that it was in principle capable of being an essential need. It was indicted that would need a wide ranging examination to determine whether education amounted to an essential living need in any particular case.
28. I find that the evidence of the witnesses to be credible on the core aspects of the place of residence of the appellant and the provision of financial support to the appellant by Mr Salim Ahmed, and the extent to which he was supported in this role by Mr Fuhad Ahmed. It was consistent with the written statements and between witnesses, and supported by documentary evidence. It was notable however that there was no evidence of any significance called on what the appellant had actually been doing since he stopped studying in 2014, and indeed during significant periods of time from 2011 to 2014 when his colleges were closed down by way of withdrawal of their licences. The evidence was he had obtained no qualifications in the UK.
29. My first task is to consider whether the appellant was a dependent on the sponsor prior to entering the UK and for the first year whilst he lived in this country. It is not argued that he was part of the sponsor’s household during this time. I find, based on credible witness evidence before me and some documentary receipts from Western Union, that from the year 2000 to 2011 the sponsor, Mr Salim Ahmed provided funds to the appellant which were to enable him to continue in education. I find that the appellant’s family were very poor and otherwise the appellant would have had to leave school at the age of 14 years and start working on the land like his parents. Whilst Mr Mazunder tried to persuade me that Mr Salim Ahmed had paid for primary education I do not find that this was the case. I find that it was at the point of the commencement of his secondary education that he paid for the appellant to continue, as this was point where he might otherwise have been permitted

to stop his education. Mr Salim Ahmed wanted this bright child to have a better future, and so, I find, took responsibility for funding his education at private secondary schools with all the costs that entailed which included school fees, cost of materials such as books and paper, travel costs and uniform costs. He did not need to pay for accommodation costs or for food when the appellant lived with his parents in Bangladesh as they could provide these things. I find that when the appellant moved to the UK between March 2010 and March 2011 the sponsor also did not need to pay accommodation costs and bills as these were paid by Mr Fuhad Ahmed, the appellant's uncle. I find that the sponsor only paid a minimal amount for the appellant's food during this time (through occasional shopping out of support funds sent), and majority was paid for by Mr Fuhad Ahmad.

30. The question arises as to whether this financial provision for education for the appellant by Mr Salim Ahmed was for an essential living need. I was not given any considered help by the representatives on this issue. No reference was made to any framework in which I should consider whether the education provided was an essential living need. I note that Article 28 of the Convention on the Rights of the Child recognises a child's right to education. Article 26 of the Universal Declaration of Human Rights gives a right to education which should be free in the elementary and fundamental stages. Article 13 of The International Covenant on Economic, Social and Cultural Rights recognises a right to free primary education. Article 2 of Protocol No.1 to the European Convention on Human Rights concerns the right to education.
31. I conclude given the weight given in international law to the right for a child to access education and the context of the evidence before me, namely the very poor living chances that the appellant would have had aged 14 years given his parents' difficulty making a living from their subsistence farming, that an education beyond the primary stage, which would enable him to have a more than hand to mouth existence reliant on the charity of wider family, should be seen as having been an essential living need when it was first funded in the year 2000. The appellant did not have an option, such as some might have had from wealthier backgrounds of entering a family business or being sponsored via an apprenticeship in a trade or profession, or other option where he could have adequately provide a future for himself beyond near abject poverty without at least a basic secondary education.
32. However I cannot find that the appellant's education continued to be essential after the completion of the secondary stage and at the point when the appellant ceased to be a child and became an adult. I was not provided with any proper time line by the appellant or his representatives setting out his Bangladeshi education, but the evidence was that prior to his coming to the UK the appellant

had entered university in Bangladesh and that he had a sufficient level of English to apply for international studies. Once in the UK he was accepted on courses to complete a graduate diploma in business management, an extended diploma in business and administrative management and the ACCA chartered accountants' examinations from the documents before me. I find that the appellant had passed the point when his essential living needs included education whilst in Bangladesh, at least at the point when he entered university education. I find that at this point his education ceased to be an essential living need. I find that education was clearly not an essential living need for the appellant in 2008 when he applied to the UK for entry clearance to come to this country as a working holiday maker. At this point in time I find he had, in his own estimation, sufficient educational skills to travel and work internationally. I find therefore that funds sent/provided by Mr Salim Ahmed for the appellant's education from 2008 to 2014 cannot be classed as making him a dependent, as they were not a material contribution to the appellant's essential living needs.

33. I find that the appellant has been a member of his cousin and sponsor, Mr Salim Ahmed's, household since 2011 when he entered the UK from Portugal and when they started to share the house at Elgar Close. The problem for the appellant is, however, that there is a very significant gap between the time when he was a dependent on Mr Salim Ahmed for his essential living needs, which, as set out above, in this case consisted of the provision of essential education between 2000 and 2008, and the point when he became a member of his household in 2011. This is a gap of three years. As set out in Sohrab, which in turn relied upon the decision of the Court of Appeal in Chowdhury v SSHD [2021] EWCA Civ 1220, it is only permissible for there to be a de minimis interruption in the dependency or household membership.
34. As there should be a stable and continuous state of dependency or household membership and not an intermittent one separated in time I find that the appellant cannot meet the test as set out in retained EEA law from Regulation 8 of the Immigration (EEA) Regulations 2016 as there was no state of dependency or household membership by the appellant on his sponsor, Mr Salim Ahmed, between 2008 and 2011.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.

3. I remake the appeal by dismissing the appeal under retained EEA law.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th September 2023

Annex A: Error of Law Decision:**DECISION AND REASONS***Introduction*

1. The appellant is a citizen of Bangladesh born on 1st March 1986. He arrived in the UK in March 2010 with a Tier 4 student visa which he extended until September 2016. At this point he overstayed his leave to remain in the UK. The appellant applied for EEA residence cards but was refused in December 2014 and August 2020. He was refused an EEA residence card as an extended family member of his cousin Mr Salim Ahmed on 30th November 2020. His appeal against this decision to was dismissed by First-tier Tribunal Judge Gaskell after a hearing on the 23rd November 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal ID Boyes on 7th March 2023 on the basis that it was arguable that the First-tier judge had erred in law for the reasons set out in the grounds of appeal.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to consider whether any such error was material and whether the decision needs to be remade. At the start of the hearing I asked the parties if they could draw my attention to the evidence as to when the sponsor became Portuguese. I could not find any evidence regarding his nationality in the bundles. Whilst this was not a ground of appeal or part of the respondent's case in refusing the application it was relevant to whether any errors by the First-tier Tribunal were material as for the appellant to have prior and present dependency on the sponsor the sponsor must have become Portuguese before the appellant entered the UK in 2010. Neither party could draw my attention to any documentary evidence on the issue. Mr Malik took instructions from his solicitor and was informed that the evidence of the appellant was that the sponsor moved to Portugal in the 1990s and became Portuguese in the year 2000. On this basis the argued for errors of law were potentially material so we continued with the hearing.

Submissions- Error of Law

4. In the grounds of appeal and in oral submissions from Mr Malik it is argued, in short summary, as follows.
5. Firstly, it is said that the First-tier Tribunal made no reasoned findings of fact regarding the oral evidence from the three witnesses, the appellant, the sponsor Mr Salim Ahmed and Mr

Fuhad Ahmed. They each gave detailed statements and at paragraph 23 of the decision it is said that if the evidence was accepted as truthful the appellant would succeed in his appeal. Whilst other documents are discussed at paragraph 31 to 37 there is no mention of the witness evidence and so it is not clear if it is accepted or rejected. As per Corroboration – Kasolo Ethiopia [2004] UKIAT 00119 no documentary corroboration is necessarily required on top of witness evidence so this is a material error of law, particularly as it is questioned where the evidence exists to support the transfer of funds to the appellant from the sponsor during visits at paragraph 31 of the decision, and when the answer to that question is that that evidence is in the witness statements.

6. Secondly, it is argued, that the First-tier Tribunal failed to look at the documentary evidence in the round starting from the witness evidence following Tanveer Ahmed v SSHD [2002] UKIAT 00439 at paragraph 31 to 37.
7. Thirdly, it is argued that the wrong test was applied to the test of dependency: the correct test is that from Jia v Migrationsverket, namely that of material support for essential living needs, whereas the test applied at paragraph 35 of the decision is one of sufficient funds to cover an individual’s living expenses in London.
8. Fourthly, it is argued that the First-tier Tribunal adopted an approach which is inconsistent with Dauhoo (EEA Regulations – Reg 8(2)) [2012] UKUT 79 as instead of applying a “prior and present dependency / membership of a household” test a test of whether the appellant came to the UK with the sponsor or joined the sponsor in the UK is applied.
9. Mr Wain argued for the respondent, in short summary, as follows. There was consideration of the witness and oral evidence at paragraph 23 of the decision. He argues that further there are observations at paragraphs 31 and 33 of the decision which indicate that deficiencies in that evidence were identified by the First-tier Tribunal Judge, such as a lack of context for the payments, a lack of detail of the appellant’s domestic circumstances, what he did in Bangladesh before coming to the UK, the amount of the appellant’s tuition fees, how these were paid, whether the sponsor paid for his accommodation with Mrs Begum, and that was why the appeal could not succeed; and further at paragraph 34 it is said that the appellant’s evidence with respect to his address history is implausible. It is argued therefore that the witness evidence and documents/ lack of documents were all looked at properly in the round in a decision which complies with Tanveer Ahmed .
10. With respect to the test for dependency it is argued that the First-tier Tribunal does set out correct legal directions on this issue at

paragraphs 16 to 22 of the decision and so what is said at paragraph 35 of the decision should be seen in that context.

11. With respect to what is said at paragraph 37 of the decision, and the argument that it was not compatible with Dauhoo, it is said that it is of no ultimate affect because the decision of the First-tier Tribunal was that the appellant could not show present dependency or past dependency.
12. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred in law and that I would set aside the decision and all of the findings, but that I would set out my full reasoning in writing, which I now do below. Both parties were content that the appeal be remade in the Upper Tribunal as the extent of the issues were not so great, and this is the normal course that should follow. It was not possible to proceed immediately with the remaking as the sponsor was not present and so the remaking hearing was adjourned.

Conclusions – Error of Law

13. As set out in the grounds it is recorded at paragraph 23 of the decision that the three witnesses gave oral evidence and had provided detailed witness statements, and as asserted in the grounds it is also found that if the facts in these statements were accepted as true then they would suffice to establish the facts as alleged by the appellant. Whilst, as Mr Wain has argued, it may be that some of the comments at paragraphs 32-34 of the decision are criticisms or identify deficiencies in the witness evidence I am not satisfied that there are sufficient reasoned findings on that evidence. There needed to be a section on the witness evidence identifying whether it was found to be credible and any limitations of that evidence. What is potentially said is mixed in with comments about documents or lack of documents; and in so far as the First-tier Tribunal finds that there was a lack of any witness evidence at all this sits uneasily with the statement at paragraph 23 that the First-tier Tribunal Judge had had the opportunity to ask questions as in those circumstances it would be expected that the First-tier Tribunal Judge would identify that when the witness was asked about the issue he could provide no answer. The discussion and conclusions section of the decision also clearly starts at paragraph 31 of the decision from the documentary evidence, which, as Mr Malik pointed out, is not the correct order as per Tanveer Ahmed where it is held that: “The decision-maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.”
14. I also find that the grounds correctly contend that the test for dependency in EEA law is incorrectly stated at paragraph 35 of the decision. The test is not whether the amount provided covers an

individual's living expenses but whether the amount is material support to the appellant's essential living needs. £50 a week in London could potentially provide such material support. Mr Wain identifies that correct directions are set out earlier in the decision, prior to the discussion and conclusions section, but what ultimately matters is the test the First-tier Tribunal applies to the facts of the case, and that set out at paragraph 35 was not the legally correct one.

15. In addition I find that what is said at paragraph 37 of the decision appears to be adding an additional requirement to the appellant to have entered with or after the sponsor. On the facts of this case and applying Dauhoo the appellant needed to show dependency prior to entering the UK and present dependency in the UK.
16. In these circumstances I find that I should set aside the decision and all of the findings of the First-tier Tribunal as the decision is marred by material errors of law.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I adjourn the remaking of the appeal.

Directions:

1. Any further evidence which either party wishes to submit for the remaking hearing must be served on the other party and filed with the Upper Tribunal 10 days prior to the remaking hearing.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10th May 2023