



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001507

First-tier Tribunal No:
EA/08018/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of December 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SATNAM KAUR
(NO ANONYMITY DIRECTION)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel instructed by Charles Simmons solicitors

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 15 November 2023

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 9 August 2023, the Tribunal (UTJ Rimington and DUTJ Metzer KC) found an error of law in the decision of First-tier Tribunal Judge Atkins itself promulgated on 6 March 2023. By his decision, Judge Atkins allowed the Appellant's appeal against the Entry Clearance Officer's decision dated 28 July 2022 refusing the Appellant entry clearance as the family member of an EEA

citizen under the EU Settlement Scheme (“EUSS”). The error of law decision is annexed hereto for ease of reference.

2. Having found an error of law in Judge Atkin’s decision, the Tribunal set that aside and gave directions for a resumed hearing before this Tribunal. No findings were preserved.
3. I had before me a bundle of relevant documents which included the Appellant’s and Respondent’s bundles before the First-tier Tribunal ([AB/xx] and [RB/xx] respectively. I also had a supplementary bundle of documents filed by the Appellant ([ABS/xx]) and extracts from a Country Information Note entitled “India: Medical and healthcare provision” dated April 2023 (“the CIN”) and from a Country Policy and Information Note entitled “India: Women fearing gender-based violence” dated November 2022 (“the CPIN”).
4. I heard evidence via a Punjabi interpreter from the Appellant’s daughter, Alka Saini. She and her husband, Harpreet Singh are the Appellant’s sponsors.
5. Having heard that evidence and submissions from both parties, I reserved my decision and indicated that I would provide that in writing which I now turn to do.

LEGAL FRAMEWORK

6. The Appellant’s application was made under the EU (Family Permit) appendix to the Immigration Rules (“Appendix EU (FP)”). She claims to be the dependent parent of her daughter. Appendix EU (FP) defines a dependent parent as follows (so far as relevant):

“Dependent parent

- (a) the direct relative in the ascending line of a relevant EEA citizen ... or of their spouse...; and
- (b) (unless sub-paragraph (c) immediately below applies):
 - (i) dependent on the relevant EEA citizen or on their spouse...:
 - (aa) (where sub-paragraph (b)(i)(bb) or (b)(i)(cc) below does not apply) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed; or
 - (bb) (where the date of application is after the specified date and where the applicant is not a joining family member) at the specified date, and (unless the relevant EEA citizen was under the age of 18 years at the specified date) that dependency is assumed; or
 - (cc) (where the date of application is after the specified date and where the applicant is a joining family member) at the date of application and

(unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed where the date of application is before 1 July 2021; or

...

'dependent' means here that:

(a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner; and

(b) such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) or by their spouse or civil partner; and

(c) there is no need to determine the reasons for that dependence or for the recourse to that support

..."

7. Having regard to the foregoing definition, the parties were agreed that there is only one issue for me to determine - whether the Appellant is dependent on her daughter and son-in-law for her essential living needs.

EVIDENCE

8. The Appellant's daughter, Ms Saini, and son-in-law, Mr Singh, have signed joint witness statements dated 5 December 2022 and 13 November 2023 ([AB/19-20] and [ABS/1-3] respectively) which were adopted by Ms Saini in her oral evidence.
9. Ms Saini and Mr Singh are both Italian citizens with status under the EUSS. The Respondent does not dispute that this is the case.
10. The Appellant's husband died in June 2016 (death certificate at [AB/40]). Since then, the Appellant is said to have lived alone in India.
11. On 27 January 2020, the Appellant applied for entry clearance under Appendix EU (FP) which was granted, valid between 6 February 2020 and 6 August 2020 ([AB/24]). Unfortunately, due to the Covid-19 pandemic, the Appellant was unable to travel, and the entry clearance expired. It was Judge Atkins' reliance on this earlier grant of entry clearance as confirmation of dependency which led to the finding of error of law by this Tribunal (for reasons set out in the error of law decision and which I deal with briefly below).

12. On 4 April 2022, the Appellant applied again for entry clearance, again relying on her dependency on her daughter and son-in-law. That application was refused by the decision under appeal. The Respondent's reasons are as follows (so far as relevant) ([RB/6]):

"...You have not provided adequate evidence to show that you are dependent on a relevant EEA or Swiss citizen, or their spouse or civil partner, as set out in [Appendix EU (FP)].

Consideration has been made, based on the evidence and information you have provided, and having regard to your financial and social conditions, or health, as to whether you cannot meet your essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen or of the spouse or civil partner.

As evidence of your dependency upon your relevant EEA Citizen sponsor or their spouse or civil partner you have provided the following evidence - money transfers.

You have provided money transfers from your sponsor. It is noted that you have not provided any evidence of your own domestic circumstance in India. Without such evidence I am unable to sufficiently determine that you cannot meet essential living needs without financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner.

On that basis I am not satisfied that you are dependent on a relevant EEA or Swiss citizen or their spouse or civil partner..."

13. The Appellant has herself provided a statement dated 2 December 2022 ([AB/14-16] in which she says the following:

"...I am financially and emotionally wholly dependent on my family in UK. I do not have any income source in India and I am dependent on financial support from UK. My family sends me money through money transfer and by making trips to India. Therefore, without their emotional and financial support I cannot survive..."

14. The Appellant's daughter and son-in-law support that position by way of assertion in their first statement ([§7-9]). By way of particularisation of the transfers, they say that they "clearly have money transfers from 2019, 2020, 2021 and 2022" which they say are evidenced by the transfers and bank statements provided with their witness statement.

15. Those documents appear at [AB/115-209]). The transfers cover the period September 2019 to June 2022. In general, they show transfers of about £100 per month. In April 2021, there is a transfer of £480 and in March 2022, one of £200. However, there are some substantial gaps in the evidence, between May 2020 and December 2020, December 2020 and April 2021 and May 2021 to February 2022. Those are not explained in the evidence.

16. Moreover, the bank statements do not provide any supporting evidence of the transfers. The only one which is expressly shown is in March 2022. Whilst I accept that the bank statements do show that the Appellant's daughter and son-in-law operate their accounts in credit and whilst I accept that it is quite possible that the transfers were made in cash, the statements do not provide evidential support for the transfers made. However, I do not understand the Respondent to dispute the transfers made as evidenced. The Respondent relies instead on gaps in that evidence.
17. More recent money transfers are contained in the supplementary bundle at [ABS/105-110]. Those show transfers made between February 2023 and October 2023 of £100 each. Again, however, there are gaps in April 2023, July 2023 and September 2023. There is no evidence of transfers made between June 2022 and February 2023.
18. There is more detail of the financial support said to be given to the Appellant in the second witness statement as follows:

“7. My mother-in-law fully and only relies upon me and my wife for emotional and financial support. Our average monthly remittance is INR 10,000 [£100] as shown in the receipts. Her average monthly expenses on her essential living needs include groceries and milk of Indian rupees (INR) 1,800 [£18], gas of INR 1,085 [£10], clothes of INR £1,500 [£15], medicines of INR 1,000 [£10], TV of INR 500 [£5], garbage collection INR 100 [£1] and watchman of INR 200 [£2]. My mother-in-law has provided receipts of groceries, gas, clothes, medicines etc but there are no receipts available for the other expenses. All her essential living needs are met by the money remittance from us. Considering the constant emotional and financial support we have given her over the last several years, she has become totally reliant upon me and wife and can no longer lead an independent life on her own.”
19. I do not place any weight on the absence of direct evidence from the Appellant in this regard. Ms Saini explained that she had spoken to her mother and the second statement had been made based on what she was told.
20. I accept that this evidence shows that a transfer of £100 per month is sufficient to cover the Appellant's needs with some to spare. However, what is not there explained is how the Appellant copes when no payments are made. As noted above, I have no evidence of transfers in three months in 2023, a seven month period between June 2022 and February 2023, an eight month period between May 2021 and February 2022, a two month period between December 2020 and April 2021, and a six month period between May 2020 and December 2020. Whilst some of those gaps may have been covered by increased payments in April 2021 and March 2022, those do not

add up to cover £100 per month for the months where evidence is missing.

21. It might be said that the Appellant's daughter and son-in-law have not kept all the transfers. However, that is not what is said in the evidence. Overall, therefore, although I accept that there is evidence of transfers being made throughout the period 2019 to 2023, I am not satisfied that this evidence shows that the Appellant had no other source of income or, importantly, relied upon those transfers to meet her essential living needs.
22. Mr Terrell also explored with the Appellant's daughter how the Appellant was able to support herself between 2016 and 2019. Ms Saini said that she had gone to India when her father died and had given her mother money. When asked how the Appellant had supported herself in 2017 and 2018, she said that her in-laws had gone to India and taken money with them. This is not dealt with in any of the witness statements. There are no witness statements from Mr Singh's parents (Ms Saini's in-laws).
23. Mr Terrell also asked why Mr Singh and Ms Saini had not simply transferred money in that period as they had done from 2019 onwards. Ms Saini said that she was very upset when her father died. That did not answer the question. In re-examination, she said that they had sent money transfers after 2019 because of the Covid-19 pandemic and the inability to travel. Before that, she said that they went to India. That was inconsistent with her answer in cross-examination that her in-laws had taken money to her mother. Furthermore, the pandemic did not prevent travel from the UK until about March 2020 whereas the transfers began in September 2019. The only evidence of travel is one itinerary at [ABS/119] which shows travel from the UK to India in November/December. Although the year is not shown, given the days of the week corresponding to the dates, this must relate to planned travel in the current year.
24. For those reasons, I do not accept Ms Saini's evidence about support given to the Appellant in 2016 to 2019. No doubt she travelled to India for her father's funeral and may have given her mother some money at that time but there is no evidence other than her oral testimony about money sent during that period. That testimony was inconsistent and did not add up for the reasons I have given.
25. I turn then to the evidence about the Appellant's living circumstances in India. The Appellant's daughter and son-in-law say in their second statement, that the property in which the Appellant lives was a joint family home owned by her mother-in-law. Although her mother-in-law is dead, the property has not been transferred or divided between her children. When asked, Ms Saini said that she had no evidence about the property ownership. She also confirmed

that her father had worked as a private tutor. He had no pension. He had not left much to her mother other than some cash.

26. The Appellant is also said to have no other close family members present in India to care for her as her siblings have moved outside India. No details are given about these family members in the witness statements. Ms Saini said that the Appellant has four siblings who are living in Canada, Italy and America. The Appellant does not mention these relatives in her witness statements. Ms Saini said that they were not responsible for helping the Appellant financially.
27. The Appellant's daughter and son-in-law say in their second statement that the Appellant is elderly and needs care which can only be provided in their custody. The Appellant was born in February 1958 and is now aged sixty-five years. There is no mention in her witness statement of medical problems nor is there any particularisation of the assertion in the witness statements of Mr Singh and Ms Saini that the Appellant needs care.
28. The Appellant relies also on the CIN and CPIN. Mr Raza did not place any significant weight on those documents in his submissions but when asked about their relevance, drew my attention to the following paragraphs:

The CIN

"10. Geriatric care

10.1 Legal provisions

10.1.1 The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, places a legal obligation on all 'adult children' in India to provide for the maintenance of their parents and grandparents who are aged 60 and older. 'Maintenance', as defined in the Act, includes residence, food, clothing and medical attendance and treatment. The Act extends to the whole of India, except the states of Jammu and Kashmir. It also applies to citizens of India who are outside India."

CPIN

"4.9 Single women

4.9.1 The DFAT report 2020 noted 'Single women reportedly make up 21 per cent of India's female population, at around 73 million. These include unmarried, divorced, separated and widowed women. The 2011 Census recorded an almost 40 per cent increase in their numbers over the preceding decade.

4.9.2 According to a 2018 article by India Spend, an online 'agency of record' on data and facts on the Indian social and political economy, 'For single women, the main issue is to be able to survive, and to be able to survive with dignity', said social worker Parul Chaudhury who is associated with the National Forum for Single Women's Rights ...Single women are forced to depend of somebody's

goodwill - in-laws, parents, brothers and sisters-in-law - just for a roof over their head or for their children to continue in school.

4.9.3 In a 2018 article in the Hindu, an Indian daily newspaper, Sreemoyee Piu Kundu, an author who previously undertook interviews with 3,000 single urban women in India, noted:

'...Between 2001 and 2011, there was an almost 40% increase in their [single women's] numbers. Media reports say that the Women and Child Development ministry under Maneka Gandhi is slated to revise policy for the first time since 2001 to address the concerns around being single and female, which include social isolation and difficulties in accessing even ordinary services.

There's been a huge growth in this demographic, and ministry officials have said that government policy must prepare for this evolution by empowering single women through skills development and economic incentives.

The policy revision also aims to address concerns related to widows and universal health benefits for all women..."

29. I did not find reference to the CPIN of much relevance. This is addressing the position of single women more generally and not of widows or older women specifically. I do note however the reference to reliance on others as including siblings which might undermine Ms Saini's evidence that the Appellant's siblings bear no responsibility for the Appellant financially.
30. I do accept however that the CIN suggests that adult children are responsible by law for the financial upkeep of their parents even if those adult children are living abroad. That supports the Appellant's case and Ms Saini's evidence that she and Mr Singh are supporting her mother as they are bound to do.
31. However, that legal obligation depends on the need for financial maintenance and so does not answer the question which I need to address. Insofar as Mr Raza relied on this background evidence as showing the social need by the Appellant for support, I can place no weight on it.

DISCUSSION

32. As Mr Terrell pointed out, the issue for me to resolve is dependency as at the date of the hearing before me. Mr Raza accepted that position. However, both representatives accepted that the evidence of dependency in the past is relevant.
33. I begin with the fact that the Appellant was granted entry clearance in 2020. However, I, as UTJ Rimington and DUTJ Metzger, do not accept that weight can be placed on this as evidence of dependency. That is because, in accordance with the definition of a dependent parent, in Appendix EU (FP), dependency is to be assumed where, as then, an applicant is making an application prior to the specified

date or before July 2021. Since dependency was at that time assumed, it follows that the earlier grant cannot be relied upon as an acceptance by the Respondent that the Appellant had shown that she was dependent on her daughter and son-in-law at that time.

34. As Mr Terrell pointed out, the only evidence of any financial dependency between 2016 and 2019 is the evidence given orally by Ms Saini. This was not dealt with in either of her witness statements nor in the witness statement of the Appellant. There is no witness statement from Ms Saini's in-laws who it is said took cash to the Appellant on an annual basis. I do not accept this late evidence as credible.
35. That is particularly so when one looks at Ms Saini's answers about why she and her husband started sending money transfers in 2019. The dates when they began to do so do not coincide with the start of the Covid-19 pandemic and so the inability to travel cannot provide the reasons for this. It is more likely that money was sent (at least on a regular basis) only when the money transfers began in September 2019.
36. As Mr Terrell also submitted, therefore, there is no explanation how the Appellant was supporting herself in that period. It may be that she was using money left to her by her husband. Ms Saini herself said that her father had left "some cash". However, that would indicate that the Appellant has, at some point since her husband's death, had another source of income about which I have been given no evidence from the Appellant or in the witness statements of her daughter and son-in-law.
37. The evidence about financial maintenance after 2019 is also incomplete. I have noted above some significant gaps in the transfers between 2019 and 2023 including some of many months which cannot be accounted for by the two payments of larger amounts in April 2021 and March 2022. I might have been prepared to overlook those as simply missing transfers had there been evidence about this. However, the evidence of Mr Singh and Ms Saini in their statements is that they have annexed "the money transfers" and not simply some of them. They say that those have been "frequent" but do not go so far as to say that they have been monthly. I can only assume therefore that this is the totality of the evidence there is about the transfers.
38. I have carefully considered whether, notwithstanding the gaps in the transfers and the absence of evidence about the position in 2016 to 2019, I can find that the Appellant is financially dependent on her daughter and son-in-law now (which is the relevant question). I accept that there have been transfers of funds in the period February to October 2023 (although still with some monthly gaps). I

accept that on the face of the documents the amounts sent covers the living expenses which the Appellant says she incurs.

39. That though is not the answer to the question which I have to resolve. The issue is not whether money has been sent but whether the Appellant is dependent on the money transfers to cover her living expenses.
40. When answering that question, I cannot ignore the lack of evidence in the past. As Mr Terrell submitted and I accept, given the long gap between 2016 and 2019 where I have found that no money was sent to the Appellant and the significant gaps in the years since then where there is no explanation for how the Appellant managed when money was not sent, the obvious inference is that there is some other source of income to which the Appellant has access.
41. For that reason, I find that the Appellant has not shown that she is dependent on her daughter and son-in-law to meet her essential living needs.

CONCLUSION

42. For the reasons set out above, I conclude that the Appellant has failed to show that she is dependent on her daughter and son-in-law to meet her essential living needs. It follows that she does not meet the definition of a dependent parent under Appendix EU (FP). Therefore, her appeal fails.

NOTICE OF DECISION

The Appellant's appeal is dismissed.

L K Smith

Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 December 2023

APPENDIX: ERROR OF LAW DECISION



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

Appeal Numbers: UI-2023-001507
EA/08018/2022

THE IMMIGRATION ACTS

**Heard at Field House
On 27th June 2023**

**Decision & Reasons Promulgated
09/08/2023**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE METZER KC**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SATNAM KAUR

Respondent

Representation:

For the Appellant: Mr D Clarke Senior Home Office Presenting Officer
For the Respondent: Mr R Ahmed instructed by Charles Simmons Immigration Solicitors

DECISION AND REASONS

1. The Respondent is a citizen of India. In a decision promulgated on 6th March 2023, First-tier Tribunal Judge Atkins (“the Judge”) allowed the Respondent’s appeal against the Entry Clearance Officer’s (“ECO”) decision to refuse the Respondent entry clearance under the EU (Family Permit) Appendix to the Immigration Rules to join her Sponsor daughter in the

- UK . The Respondent had refused the application on the basis that there was insufficient evidence that the Respondent was financially dependent upon the Sponsor.
2. The Judge allowed the appeal on the basis that he found that the Respondent had established she was dependent upon the Sponsor and allowed the appeal under the Immigration Rules and under Article 8 of the ECHR.
 3. The Respondent's grounds assert that the Judge has erred through a misdirection in law in that he incorrectly placed weight on the fact that an earlier family permit application made in January 2020 had been granted by the ECO, without noting that the relevant immigration rules expressly provide for the presumption of dependency for applications made prior to July 2021, and the need to prove dependency for those made thereafter and that there was therefore a material error of law in the Determination.
 4. In the Determination at paragraphs 28-32, the Judge rehearsed the evidence before him noting at paragraph 30 that he did "not know if she owns the property in which she lives, or any other property. I do not know if she has other sources of income. I do not know if she has any savings which she can use to meet her essential needs. I do not know what her outgoings are" which pin-pointed the inadequacies of the overall financial picture and the lack of evidence generally in support of dependency.
 5. Crucially for this appeal, at paragraph 32 the Judge stated "However, and most importantly, the [Appellant] has – by granting a previous visa – accepted that in 2020 the [Respondent] was dependent upon the Sponsor for financial support to meet her essential living needs".
 6. The Court of Appeal in *Siew Lian Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383* made clear that the evidence of dependency is a simple matter of fact.
 7. The issue before us was a narrow one, namely whether the Judge had misdirected himself at paragraph 32 as set out above. It was properly and rightly conceded on the Respondent's behalf that there was an error of law and we find in accordance with *Lim* and when assessing the facts, that this error was material as if he had directed himself correctly, particularly mindful of what is contained within paragraph 30, the Judge could have come to a different decision.
 8. We consider that the appeal on behalf of the Secretary of State should therefore be allowed and with the agreement of both parties that the matter should be retained in the Upper Tribunal and that any further evidence to be relied upon by the Respondent should be submitted not less than 21 days prior to the relisted hearing date.

Notice of Decision

9. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). We retain the appeal in the Upper Tribunal having considered Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) and noting that both parties agreed the matter should be retained in the Upper Tribunal.

Directions

10. The Respondent to provide any further evidence not less than 21 days prior to the relisted hearing date.

Signed [Anthony Metzger KC](#)

Date: 10 July 2023