



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

**Case No: UI-2023-003289**  
**First-tier Tribunal No:**  
**EA/09169/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 December 2023**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MR ABDUL MUHIT**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Ahmed, Counsel

(instructed by Lifeline Options CIC)

For the Respondent: Mr S Walker, Senior Home Office Presenting  
Officer

**Heard at Field House on 17 November 2023**

**DECISION AND REASONS**

1. Permission to appeal was granted by First-tier Tribunal Judge Cartin on 15 June 2023 against the decision to dismiss the Appellant's EUSS appeal made by First-tier Tribunal Judge Row in a decision and reasons promulgated on or about 19 April 2023.

2. The Appellant, a national of Bangladesh born on 21 October 2011, had applied for settled/pre-settled status as the dependent grandson of his sponsor under Appendix EU of the Immigration Rules. The application was refused by the Secretary of State for the Home Department on 17 August 2022. His sponsor, Mr Hasem Abul, is an Italian national by naturalisation settled in the United Kingdom with Indefinite Leave to Remain.
3. The Appellant had applied for settlement alongside the persons he claimed were his father and uncle, Mr Abdul Motalab and Mr Abdul Bashed, the sons of his sponsor. Their appeals were also dismissed. They were refused permission to appeal to the Upper Tribunal because they had failed to prove dependency as well the relationship claimed.
4. Judge Row found that the Appellant had failed prove that he was related to his sponsor as claimed. Dependency was not in issue in his appeal as the Appellant was under 21 years of age. Judge Row found that the documents produced in support of the relationship claimed attracted insufficient weight. The Appellant thus failed to meet the requirements of Appendix EU. The judge observed that it remained possible that the Appellant was related to his sponsor but the evidence so far produced was inadequate.
5. Permission to appeal was granted because it was considered arguable that the judge had given insufficient weight to the evidence which had been produced for the appeal hearing.
6. There was no rule 24 notice but Mr Walker indicated that the onwards appeal was opposed by the Respondent.
7. On the day prior to the Upper Tribunal hearing, the Appellant applied for leave to produce additional evidence, namely DNA test results which showed that the Appellant was related to his sponsor as claimed. The application had not been served on the Respondent and so Mr Walker had not seen the new material. The application was refused as the DNA test results were not before the First-tier Tribunal Judge and the application was made far too late without any satisfactory reason for the delay.
8. Mr Ahmed for the Appellant relied on the grounds of appeal and the grant of permission to appeal. He submitted in summary that the judge had not adequately addressed the evidence which had been

provided in support of the entry clearance application. The judge's approach had in effect been perfunctory. While it was true that the birth certificates of the father and uncle had been registered years after their respective births, there was other evidence such as the family certificates as well as the witness statements of the sponsor, the father and the uncle. The Bangladeshi passports had not been impugned. All of the family names corresponded on the various certificates. The Appellant could not know why his appeal had been dismissed. The determination was unsafe and should be set aside.

8. Mr Walker for the Respondent submitted that there was no material error of law sufficient to warrant setting the decision and reasons aside. Perhaps the judge should not have said that "it may be that the appellants are the children and grandchild of the sponsor" at [23] of the decision, as that tended to suggest some degree of uncertainty remained in his mind, nevertheless the substance of the reasons for dismissing the appeal were clear. The birth certificates could not be treated as reliable and the Bangladeshi passports had been issued on the basis of the birth certificates so had no separate force. The onwads appeal should be dismissed.
9. In reply, Mr Ahmed submitted that the findings as to the Appellant's relationship to his sponsor were insufficiently reasoned and so the decision could not stand.
10. This appeal turned on a narrow point, the relationship issue. The judge could only work from the evidence placed before him, of which the most important were plainly the birth certificates of the Appellant and his claimed father and uncle. It was pointed out in the refusal notices that the Respondent was unable to accept them as reliable documents in view of the lengthy delay in their registration. The other documents produced were subsidiary and attracted little weight. The Appellant was on clear notice of the problem, which is one frequently encountered in countries like Bangladesh which have only recently introduced compulsory registration of births. Thus the Appellant had the opportunity prior to the hearing to obtain better if not conclusive evidence, such as DNA test results from a Home Office approved provider.
11. In the tribunal's view, that is the intended and actual meaning of the judge's remarks at [23] of his decision, which it has to be said were something of a hostage to fortune and opened the way to a successful permission

to appeal application. Those remarks have in the event been borne out by the DNA test results obtained subsequently and too late.

12. It was submitted in the grounds of appeal that the judge should have given weight to the witness statements of the sponsor, the father and the uncle, however it is plain that the judge considered those witness statements and found them unreliable. He rejected the claims of dependency on the sponsor by the father and uncle with sustainable reasons. Permission to appeal was rightly refused. As the dependency was bound up with the claim of relationship (for there was no claim of general charity towards the father and uncle), the witness statements attracted little weight on the relationship issue and were insufficient to displace the deficiencies of the birth certificates.
13. It may be that Judge Row took a stricter view of the evidence than some other judges might have done, however it is plain that evidence had the deficiencies he identified and explained. There is no reason to doubt that the judge had given due consideration to all of the evidence submitted. His findings were open to him. In the tribunal's view, sufficient reasons were given for the Appellant to understand why his appeal was dismissed: in short, the evidence produced on his behalf did not meet the standard of the balance of probabilities. The tribunal finds that there was no material error of law in Judge Row's decision, so that the onwards appeal must be dismissed.

### **DECISION**

The Appellant's appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged, save that the anonymity order was not justified and is discharged.

**Signed**  
2023

**Dated** 22 November

**R J Manuell**  
**Deputy Upper Tribunal Judge Manuell**