IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001763
UI-2023-001764
UI-2023-001765

First-tier Tribunal Nos: EA/02322/2022
EA/02328/2022
EA/02325/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

MRS SYEDA ZAHRA TAMKEEN (1)
MISS SYEDA ZAIRA BATOOL (2)
MR SYED MUHAMMAD QASIM (3)
(NO ANONYMITY ORDER MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Broachwalla, counsel, Clarendon Park Chambers
For the Respondents: Ms Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 December 2023

DECISION AND REASONS

Background

1. This is the remaking of the decision in the Appellants' appeals against the Respondent's refusals of their human rights claims.

2. The Respondent's decision letters of 4 December 2020 and 9 December 2020 refused the Appellants' applications made on 15 October 2020. The First Appellant is the mother of the Second and Third Appellants.

3. The First Appellant applied under the EU Settlement Scheme to join the Sponsor, Mr Syed Nigah Hussain, on the basis that he is her biological brother and she is dependent on him. The Second and Third Appellants applied under the EU Settlement Scheme to join the same Sponsor on the basis that he is their uncle and they are dependent on him.

4. The Respondent refused the Appellants' claims by letters dated 4 December 2020 (First Appellant) and 9 December 2020 (Second and Third Appellants).

5. The First Appellant's application was considered under Appendix EU (Family Permit) to the Immigration Rules on the basis she was a 'family member of a relevant EEA citizen'. It was refused on the basis that she had not provided sufficient evidence to prove that she was a 'family member' and her relationship to the Sponsor did not come within the definition of that term.

6. The Second and Third Appellant's applications were considered under regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"). They were refused on substantially the same basis as each other. This was that the eleven money transfer receipts they had provided did not, in isolation, prove that they were financially dependent on the Sponsor. They had not provided any evidence regarding their own family's financial situation. Whilst they had provided an affidavit declared by their mother, this was in effect a self-declaration and little weight was attached to it. It was not accepted that they were financially dependent on the Sponsor.

7. The Appellants appealed the refusal decisions.

8. Their appeals were heard together as linked appeals by First-tier Tribunal Judge Row ("the Judge") at Nottingham on 2 March 2023. The Judge subsequently dismissed all of the appeals in a decision promulgated on 7 March 2023.

9. The Appellants applied for permission to appeal to this Tribunal, which was granted by First-tier Tribunal Judge Lawrence on 11 May 2023.

10. The Respondent filed a rule 24 response.

11. Following a hearing on 12 September 2023, my error of law decision was promulgated on 5 October 2023. I found that the Judge's findings concerning the First Appellant were sound such that I upheld his decision to dismiss the First Appellant's appeal. However I found that the Judge's findings concerning the Second and Third Appellant's appeals were infected by material error of law and set them aside, for remaking in this Tribunal. The remaking is the subject of this decision.

The Hearing

12. As the Second and Third Appellants are the only appellants concerned in this decision, I shall refer to them simply as 'the Appellants' and confirm that, unless stated otherwise, this term does not include the First Appellant whose appeal has already been dismissed.

13. At the resumed hearing before me on 14 December 2023, the papers before me were as follows:

    (a) The bundles as were previously before the Judge which are:

        (i) Respondent's bundles comprised of 29 pages for each of the Appellants;

        (ii) Appellants' 'stitched' bundle 155 pages

    (b) Appellants' additional paginated bundle filed the day before the hearing.

14. Mr Broachwalla apologised for the lateness of the additional bundle, which he said contains the same documents as previously plus a new skeleton argument, new Sponsor's witness statement, and some additional money transfer receipts. He said the new bundle contained everything upon which the Appellants wished to rely. He did not have a particularly good explanation for the lateness, however Ms Arif did not object to the bundle being adduced and admitted that the Respondent had also not complied with the Tribunal's directions to provide a skeleton argument. Although I expressed my disappointment and underlined the need for compliance with procedure, I permitted the additional bundle given the very limited amount of additional items, lack of objection from the Respondent, and for the sake of dealing with the matter in its entirety with a view to preventing any further litigation in accordance with the overriding objective.

15. It was agreed that the sole issue was whether the Appellants are extended family members of the sponsor, their uncle, Mr Syed Nigah Hussain, pursuant to regulation 8 of the EEA Regulations, which required me to consider dependency.

16. The Sponsor attended and gave oral evidence in Urdu via the interpreter who he confirmed he understood. There were no other witnesses.

17. I have had regard to all the oral and documentary evidence and considered this and the submissions even where not specifically mentioned.

18. Full notes of the oral evidence and submissions are set down in the record of proceedings. The main points arising from the oral evidence were as follows:

Oral evidence – Sponsor, Mr Syed Nigah Hussain

19. The Sponsor confirmed his full name and address and that the contents of his witness statement dated 13 December 2023 were true and accurate to the best of his knowledge and could stand as his evidence in chief.

20. He said the person other than him shown on the electricity bills provided is his father; electricity bills in Pakistan now mention the parentage of the bill payer; otherwise it shows the Sponsor's name because the house belongs to him.

21. He confirmed that the document appearing to show bank entries, commencing with an entry for Hatton service station, is from his bank statement. As regards

the entry on 24 January 2020 to 'Amran Haider', he said this is money being received from his friend in Derby; he was short of money at the time and friends are there to help each other. The entry on 19 February 2020 showing money being paid in euros to 'Taveer Hussain', also concerned his friend; he has only sent such monies once or twice in the last years. The entry on 19 March 2020 showing money sent to 'Hassan Askri' in euros, concerned money sent to his nephew who was in need of money at the time. When asked why the money was in euros, he said because "he helped me in the past and I have to return that money back to him". When asked again later, he said because the person lives in Europe.

22. He confirmed that the letter dated 10 October 2020 from "the Educators" was in respect of his sister's son's education; it says his nephew is the son of Syed Ali Raza because the school always mention the father or parents' names on documents. He said even though this document refers to the school as being a girl's school, it is actually co-educational, he does not know why the name is like that, it has been like that for some time. He did not know whether the school had been informed that his nephew's parents have separated; his sister is the one contacting the school.

23. He said he pays the school fees for his nephew; the money he sends is used for the children's expenses and admission fees which his sister manages.

24. He confirmed the document headed "Bank al Habib" is a receipt from a bank for money sent by him using Moneygram; he did not send money into an account, his sister was able to pick it up at different branches of different banks; she does not have a bank account in Pakistan to his knowledge; he has not asked her if she has one, there was never a need to open one as it works quite well sending it through Moneygram.

25. He said his mother, wife and children all came to the UK during Covid; his father remained in Pakistan as he was not willing to come over.

26. He said he does not send a fixed amount of money to his sister, but between £150 and £250, it depends on need and on his savings as well; she needs more but she manages to live within what he sends; he spends the money on the children, their education and grocery shopping; receipts were submitted with the application; they do not have to pay rent as it is his house; he has lived there himself so knows the circumstances and how much things cost.

27. He said his sister is not in contact with her husband and the husband does not pay anything towards the children.

28. He said he is her only brother and she is his only sister; she lives in his house in Pakistan; their father sometimes lives in an elderly people's home but does not stay in one place, sometimes he goes to his brother and nephew's houses and stays with them for a time. He said he also sends some money to his father, who also receives money from his own nephews living abroad; their father cannot support the sister given his age and because he does not work.

29. He said he had never stopped sending money to his sister; if he did, it would be very difficult for her. He said she has no other bills to pay apart from electricity; there is no gas to the village and there is a water pump at the house; he is the only blood relative to his sister so no one will support her if he does not.

30. He said if the Appellants succeed, they will look for other ways to bring their mother over as it would be difficult for them to be here without her.

Respondent's submissions

31. Ms Arif that she relied on the Refusal Letters; the Appellants must need the financial support of the Sponsor to meet their essential needs in Pakistan and the Sponsor needs to show he has sufficient income to support them; if they cannot meet their needs without his support, they must be considered as dependent even if they receive support from someone else.

32. She submitted that there is insufficient evidence to show support is provided by the Sponsor; the witness statements from the Sponsor and mother are vague and do not set out what the Appellants' essential needs are; there is no breakdown of the money required to show the support is material and is being used to meet needs; mere assertion is not sufficient.

33. She asked me to view the documents holistically; there is no evidence that the Appellants live in a house owned by the Sponsor; the bills provided show both the Sponsor and his father's name even though his father does not always live there; there is no way to ascertain that the money the Sponsor sends goes to paying these bills; the letter from school and school fee receipts cannot be taken as essential living needs and again there is no way to ascertain that the money sent is used to pay these.

34. She said whilst there are receipts for food, there is no confirmation that the money sent is used for these and little weight can be attached to them as they are ad hoc, do not show what is being paid for or any names of the purchaser.

35. It is accepted that money is being spent from the Sponsor to the Appellants but only in sporadic unfixed amounts; transfers are not evidence of it being needed, it could be sent for anything and the case authorities say financial support in itself is not enough.

36. She said there is a lack of evidence showing the Appellant's financial position; the mother is said not to have a bank account but this is implausible; he said the money he sends is not enough that there is not much evidence from her at all; it is reasonable to expect to see evidence which details their income, expenditure, and overall financial position to show that without the Sponsor's support, their needs could not be met. There is also no witness statement from, or detailing the circumstances of, the Sponsor's father and it may be that the money sent is used for whom.

37. She submitted that dependency has not been made out and invited me to dismiss the appeals.

Appellant's submissions

38. Mr Broachwalla said the Sponsor had given credible and consistent evidence; he has very clearly said that the amount sent depends on the Appellants' needs; there is no requirement for a tabulated format; prices can vary; some items need to be paid in some months but not others, like school fees; education is an essential need; there is documentary evidence which shows the amounts being sent and amounts spent by the Appellants; this is evidence of their needs being

catered for by the Sponsor; his oral evidence provides the link between the sending and using.

39. He said money transfers are sent virtually every month and the amounts differ because the needs differ monthly; the Sponsor is responsible because it is a patriarchal society, the husband does not support the family and the Sponsor's father is elderly and does not work; it is natural for the male family member to send money back; so has helped for four years now; there is sufficient evidence; it is the date of application that falls to be assessed so historical evidence is not needed.

40. He said even if the sister had a bank account, this would not assist much anyway as she is not working and has no other income; the Sponsor has explained how the money is sent and received; there are what receiving receipts in the new bundle; they always show money been received by the mother, having been sent by the Sponsor.

41. He said there is documentary evidence of what the money is being spent on, in the form of receipts; the Sponsor explained what is shown on the school receipts and there is a letter from the school confirming nephew attends; the electricity bills are evidence that the property belongs to the Sponsor; providing accommodation shows he provides for a large part of their needs; he explained that they do not need to pay for water or gas.

42. He submitted that it is clear on balance that there is sufficient evidence of dependency; this is the only question that needs to be answered, and not whether the Appellants would come without their mother.

43. At the end of the hearing, I reserved my decision.

Legal framework

44. The Appellants' applications were made and refused before the end of the transitional period following Britain's exit from the European Union. Their right of appeal is limited to that referred to regulation 36 of the Immigration (European Economic Area) Regulations 2016 ("the Regulations"), namely whether the Respondent's decision breaches the Appellants' rights under the EU Treaties in respect of entry to or residence in the United Kingdom.

45. I need to consider whether the Appellants are Family Members or Extended Family Members of an EEA National. It is not in dispute that the Immigration (European Economic Area) Regulations 2016 ("the Regulations") fall to be considered, regulation 8 in particular.

46. The relevant parts of the Regulations are as follows:

> "Regulation 7
>
> 1) In these Regulations, "family member" means, in relation to a person ("A")—
>
> (a) A's spouse or civil partner;
>
> (b) A's direct descendants, or the direct descendants of A's spouse or civil partner who are either—
>
> (i) aged under 21; or

(ii) dependants of A, or of A's spouse or civil partner;

(c) dependent direct relatives in A's ascending line, or in that of A's spouse or civil partner.

...

(3) A person ("B") who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card must be treated as a family member of A, provided—

(a) B continues to satisfy the conditions in [regulation 8(1A), 8(2), (3), (4) or (5)]1; and

(b) the EEA family permit, registration certificate or residence card remains in force.

(4) A must be an EEA national unless regulation 9 applies (family members [and extended family members]2 of British citizens).

Regulation 8

(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

(6) In these Regulations, "relevant EEA national" means, in relation to an extended family member—

(a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;....

(7) In [paragraphs (2), (3) and (4)]5 , "relative of an EEA national" includes a relative of the spouse or civil partner of an EEA national [.]"

47. The case of Latayan v SSHD [2020] EWCA Civ 191, which reviews the previous case law on dependency, held as follows:

[23] Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: Jia v Migrationsverket Case C-1/05; [2007] QB 545 at [37 and 42-43] and Reyes v Migrationsverket Case C-423/12; [2014] QB 1140 at [20-24]. As the Upper Tribunal

noted in the unrelated case of Reyes v SSHD (EEA Regs: dependency) [2013] UKUT 00314 (IAC), dependency is a question of fact. The Tribunal continued (in reliance on Jia and on the decision of this court in SM (India) v Entry Clearance Officer (Mumbai) [2009] EWCA (Civ) 1426):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

48. Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

49. [24] As to the approach to evidence, guidance was given by this Tribunal in Moneke and others (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC):

"41. Nevertheless dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in SM (India) (above) dependency means dependency in the sense used by the Court of Justice in the case of Lebon [1987] ECR 2811. For present purposes we accept that the definition of dependency is accurately captured by the current UKBA ECIs which read as follows at ch.5.12:

"In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations:

Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her essential needs - not in order to have a certain level of income.

Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources.

There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment.

The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived."

42. We of course accept (and as the ECIs reflect) that dependency does not have to be "necessary" in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity: see SM (India). Nevertheless where, as in these cases, able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this

> should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.
>
> 43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters."

50. The case of Lim v ECO [2015] EWCA Civ 1383 held that:

> “In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.”

51. The burden of proof is on the Appellants to prove the facts they allege and the standard is the balance of probabilities.

Findings of Fact and Conclusions

52. The Respondent takes no issue with the Sponsor being a EEA national nor with his being the biological brother of the Appellants’ mother. I have seen the Sponsor’s Spanish passport, letter granting him pre-settled status, family registration and birth certificates and accept the relationship and relevant nationalities.

53. I find that the Appellants do not fall within the definition of ‘family member’ in Regulation 7. Neither of them is the Sponsor’s spouse, civil partner or direct descendant. If they are extended family members, I have seen no evidence that they have been issued with EEA family permits, registration certificates or residence cards.

54. I find that the Appellants potentially fall within the definition of ’extended family member’ under Regulation 8. As the Sponsor’s biologically related niece and nephew, they fulfil the requirement of being the relatives of an EEA national under regulation 8(2), residing in a country other than the United Kingdom and wanting to join their uncle in the UK. I shall therefore address the question of dependency.

55. Based on the money transfer receipts provided, and as the Respondent has accepted, I am satisfied that the Sponsor sends money to the Appellants’ mother. I cannot find that the amounts sent are uniform in amount, as they range between around £80 and £150, but they do appear to be sent monthly. This is roughly in accordance with the application which said £100 was sent monthly, and in accordance with the Sponsor’s oral evidence in saying that there was no fixed amount sent.

56. I accept that the Sponsor has sent money since at least January 2020 and continues to do so. I note some documents have been provided to show the money is both sent by the Sponsor in the UK, and received by the Appellants' mother in Pakistan. There only appear to have been money transfers since the Sponsor arrived in the UK, which the mother's application states was on 18 December 2019. There is no documentary evidence of any sums being sent before this. This appears to correlate with the explanation that the Appellants have required the Sponsor's financial support since the Appellant's father left their mother in January 2020, when she moved back to the family home in Pakistan. Having said that, I note there is an undated statement written by the mother saying that the Sponsor's financial support has been ongoing for a considerable amount of time, without giving any dates.

57. As to what the money is used for, the cover letter to the application was silent on this. The mother's affidavit dated 10 October 2020 simply said that the Sponsor's money pays for all the expenses, without specifying what they are. The undated statement from the Appellants says that from the money sent, they are able to pay for utility bills (plural), food and clothes. The Sponsor's witness statement does not provide any detail at all as to what the money is spent on. His oral evidence was that the money is spent on the Appellants, their education and grocery shopping, and that they do not have to pay rent as it is his house. Overall, no clear explanation has been provided as to what the Appellant's essential needs are, how much is needed in respect of those needs and how this compares to the amounts being sent.

58. Whilst the Sponsor's oral evidence was that he owns the property in Pakistan in which the Appellants live, the documentary evidence does not necessarily support this. As discussed at the hearing, the electricity bills show the names of the Sponsor and his father, which indicates that the father lives there. The Sponsor has not provided any objective or other evidence to support him in saying that in Pakistan, the father's details are usually included on utility bills and I do not understand why they would be. The plurality of "utility bills" in the Appellants' statement referred to above indicates there is more than one utility to be paid for. There is no evidence from anyone in Pakistan, or objective evidence, to support what the Sponsor said at the hearing about gas and water not being utilities required to be paid for.

59. Paragraph 3 of the Sponsor's witness statement (dated only a few days before the hearing) says "*My sister and her children started living in the family home where my parents live"*. He also refers to "*our family home"* in paragraph 2. This is different to the Sponsor's oral evidence, which was that his mother had come over to the UK during covid, and that his father did not live at the property full time. The application made by the Appellant's mother on 15 October 2020 stated that "*My Children are living at my brother home Syed Nigah Hussain there my mother, father [sic] are living together and Syed Nigah Hussain financially support me*". This also indicates that the Sponsor's father lives in the same household. I do not understand when the grandmother came to the UK as the mother's application was made in October 2020 when Covid lockdowns were still occurring. I do not understand why statements have not been provided from the grandparents if they live with either the Sponsor or his sister, although I appreciate he was not asked about this at the hearing. There is no documentary evidence going to the ownership of the property and overall, the evidence is unclear as to who actually lives there. On balance, I find the Appellants live there

together with at least their mother and grandfather. I do not consider I have sufficient information on which to make a finding on who owns the property.

60. There is a lack of explanation concerning the situation with the Appellants' father. The mother's application said "*I am living separately from January 2020 to my husband due to family issues"* without explaining what these issues were. Her affidavit dated 10 October 2020 said "*due to some circumstances I cannot live with my husband from January 2020. I am living separate with my children and no communication with my husband*". She again does not explain what the circumstances were around their separation. The undated statement from the Appellants does not mention the husband at all, nor the grandfather. The Sponsor's witness statement says the mother:

"was married to her husband however her husband is unemployed in Pakistan and there have been many domestic issues between the two. Her husband left her and she moved to our family home in Pakistan and started living there".

61. The school fee receipts show the name of the Appellant's' father which would indicate, on the face of it, that he is still present in their lives. Overall, it is very unclear as to why, and when exactly, the father left the mother and Appellants. I do not consider his being unemployed is sufficient a reason for him to leave unless he went to find work, but this has not been said. Given the vagueness of the evidence, and lack of evidence, about him, I do not find it proved on balance that he is no longer in their lives and does not support them.

62. Whilst some receipts have been provided, without corresponding explanation, these tell me little about the Appellants' regular outgoings or essential needs. I accept that many more receipts have been provided for the last few months and that several of these state the Appellants' mother's name, however there is just no explanation concerning what these receipts for and how they demonstrate the overall cost of essential needs. Even if they could be said to demonstrate that cost, I have not been given any information as to what they amount to on average per month so that I could compare it to what the Sponsor sends.

63. As to the Sponsor's own circumstances, there is again a lack of information and explanation. I accept that he is employed and he has provided payslips and bank statements showing his salary going in. I have no information about who he lives with and what his own outgoings are. He has provided tenancy agreements but these do not mention any other occupants, and these agreements are at odds with his mentioning at the hearing that a friend helped him out with money because he was 'buying' a house at the time.

64. It was discussed at the hearing that there are a number of curiosities in the Sponsor's bank statements, in that there are sums of money coming and going from several different people. One of the people named as Hassan Askri, whom the Sponsor sent over £280 in euros in March 2020, was said by the Sponsor to be his 'nephew'. However he also said that the Appellants' mother was his only sibling. A family registration certificate has been provided to show that the Appellants are her only children. I therefore do not understand how Hassan Askri can be the Sponsor's nephew in the usual sense of the word meaning a sibling's son.

65. Besides this person, six other people are showing in the statements as being sent money from the Sponsor. He said some of them are relatives in Pakistan, which would indicate that the Appellants may have other relatives in Pakistan.

The Sponsor mentioned other relatives in the context of his father as well, and he also said he sent his father money, but I cannot see any reference to this in the documentary evidence. As the Respondent has not expressly challenged the Sponsor's credibility, I will say simply that I do not consider I have been given a clear, or satisfactory, picture as regards the Sponsor's own financial situation. There is a concern that the Sponsor cannot truly afford to support the Appellants, given the lack of explanation as to his living circumstances, the money he sends to various people and his own outgoings in the UK. However, the ability of the Sponsor to support the Appellants once in the UK has not been challenged by the Respondent in any meaningful way. The focus is on the question of dependency in Pakistan.

66. Overall, whilst I accept that the Appellants are financially supported by the Sponsor, as per the case authorities, this is not sufficient in itself. I find the evidence viewed as a whole does not satisfactorily explain how/why the Appellants came to be dependent on the Sponsor, what their living circumstances are in Pakistan, what the Appellant's essential needs are, what they cost, how this compares to what the Sponsor sends, and the Sponsor's own financial circumstances are.

67. Overall, I am not satisfied on balance that the Appellants have proved that they require and use the money sent by the Sponsor to meet their essential needs as at the date of application nor since.

68. Therefore, overall, I find the evidence is not sufficient to discharge the applicable standard of proof of the balance of probabilities. I do not find the Appellants have shown they are dependent on the Sponsor and so I find they do not meet the requirements of regulation 8.

Notice of Decision

1. The appeals are dismissed.

2. No anonymity direction is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 January 2024

ANNEX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
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And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Broachwalla, Clarendon Park Chambers
For the Respondents: Ms Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 12 September 2023

DECISION AND REASONS

Background

1. This matter concerns appeals against the Respondent's decision letters of 4 December 2020 and 9 December 2020, refusing the Appellants' applications made on 15 October 2020. The First Appellant is the mother of the Second and Third Appellants.

2. The First Appellant applied under the EU Settlement Scheme to join the Sponsor, Mr Syed Nigah Hussain, on the basis that he is her biological brother and she is dependent on him. The Second and Third Appellants applied under the EU Settlement Scheme to join the same Sponsor on the basis that he is their uncle and they are dependent on him.

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4. The First Appellant's application was considered under Appendix EU (Family Permit) to the Immigration Rules on the basis she was a 'family member of a relevant EEA citizen'. It was refused on the basis that she had not provided sufficient evidence to prove that she was a 'family member' and her relationship to the Sponsor did not come within the definition of that term.

5. The Second and Third Appellant's applications were considered under regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"). They were refused on substantially the same basis as each other. This was that the eleven money transfer receipts they had provided did not, in isolation, prove that they were financially dependent on the Sponsor. They had not provided any evidence regarding their own family's financial situation. Whilst they had provided an affidavit declared by their mother, this was in effect a self-declaration and little weight was attached to it. It was not accepted that they were financially dependent on the Sponsor.

6. The Appellants appealed the refusal decisions.

7. Their appeals were heard together as linked appeals by First-tier Tribunal Judge Row ("the Judge") at Nottingham on 2 March 2023. The Judge subsequently dismissed all of the appeals in a decision promulgated on 7 March 2023.

8. The Appellants applied for permission to appeal to this Tribunal on four grounds as follows:

> "Ground 1- Speculation by the Judge
>
> The Judge states the following:
>
> "22. Money transfer might be evidence of dependency. It might not be. Money can be transferred for other reasons. It may have been transferred for the maintenance of the sponsor's parents. Both were elderly and at that stage living in Pakistan. The payments may have been made to give the impression of dependency to support an application such as this. The timing of these payments might suggest this."
>
> The Judge is being entirely speculative, whereas he should have made findings of fact which he fails to do in the above paragraph leading to an erroneous decision.

The Judge fails to weigh up the evidence and come to a conclusion as to whether or not the Appellants are dependent on their Sponsor, rather he does not commit to a conclusion and speculates about their circumstances.

Ground 2- Weight placed on irrelevant matters

The Judge states the following:

“23. There is no documentary evidence of the sponsor having made any payments to his sister whilst the sponsor was living in Spain. The sponsor gave evidence that he had made payments but had not kept the receipts. I do not accept that. The companies transferring money would have had records of payments made and evidence of this could have been obtained.

24. The refusal letters for the two children made it plain that the respondent would expect to see evidence to support the claimed dependency. T and the sponsor could have done much more. They could have provided bank statements to show the family circumstances, if such bank statements existed. The sponsor could have provided evidence that he owned the property where the appellants are living. Independent evidence of the separation of the sponsor and her husband could have been provided. Evidence concerning the circumstances of the sponsor’s mother and father in Pakistan could have been provided.”

The Judge places undue weight on the lack of evidence surrounding the Appellants’ dependency on the Sponsor from Spain. This is contrary to the position in Rahman [2012] C-83/11. Evidence of historic dependency is not needed. What is crucial is that the situation of dependency must exist at the very least exist at the time the Appellants apply to join their Sponsor- the CJEU at §35 of Rahman held the following:

“In the light of the foregoing, the answer to the third and the fourth question referred is that, in order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are ‘dependants’ of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.”

The Judge should have focussed his mind on dependency at the time of the application. That was the crucial question and instead focussed on immaterial matters.

The Judge criticises the Appellants for not providing evidence of bank statements, the circumstances of their family members in Pakistan. However, the Judge never really engages with the question of dependency. The case of Reyes (EEA Regs: dependency) [2013] UKUT 00314 (IAC) makes it clear that it is irrelevant whether the Appellants are wholly or mainly dependent on the EEA national Sponsor; what is relevant is whether the Appellants are reliant upon his Sponsor for his essential living needs:

“22. The statement just quoted from [29] of the determination betrays the application of incorrect legal criteria. As the case law makes clear, in the context of EU law on family members the test of dependency is not whether a person is wholly or mainly dependent, but whether he or she is reliant on others for essential living needs.”

The correct test is whether the Appellants are dependent on his Sponsor for them to meet their basic needs- Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383:

“32. In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in

my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency.

The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.

The Judge focusses on the circumstances of family members in Pakistan. Whilst this may be of some use, the crucial question of whether the Sponsor pays for their essential needs is not asked by the Judge. Additionally, the Sponsor was present at the hearing and should have been asked questions whether his sister had a bank statement in Pakistan. Additionally, the Appellants' evidence is that the first Appellant's husband has abandoned the family and thus, they are reliant on his support. There is nothing in the evidence which suggests that the Judge should depart from the Appellant's position.

Ground 3- failure to consider the evidence/ failure to consider the evidence properly

Nowhere in the determination does the Judge consider the documentary evidence provided by the Appellants. These include bills and receipts which confirm that the money sent by the Sponsor is for the Appellants' essential needs. The Sponsor's evidence was that the only way the Appellants could pay for these bills is through the help of the Sponsor. Given that the first Appellant's position is that she does not work and is separated from her husband, and the second and third Appellants are young children, the Judge ought to have considered this aspect of the claim properly but failed to do so.

Ground 4- First Appellant's appeal should have been considered under the Regulations

It is evident that the first Appellant mistakenly applied under the EUSS scheme on 15 October 2020; her children applied under the EEA Regulations. It is clear that this was an error and the Respondent should have informed her of the error. Further, in light of her children applying under the Regulations, her appeal should have been considered under the Regulations, but the Judge failed to do so. The case can be distinguished from Batool as here, it was a mistake by the first Appellant as to applying under the wrong form. See the Respondent's policy titled 'EU Settlement Scheme Family Permit and Travel Permit Version 10.0'.

In addition, Paragraph 5 of Schedule 3 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 confirms that the provisions of the EEA Regulations 2016 specified in paragraph 6 continue to apply to any appeal which has been brought under the EEA Regulations 2016 and has not been finally determined before the commencement day. The application should have been considered under the EEA Regulations as per the concession."

9. Permission to appeal was granted by First-tier Tribunal Judge Lawrence on 11 May 2023, stating:

"1. The applications are in time.

2. It is arguable that the Judge materially erred in law in their approach to the evidence, as asserted in ground 3.

3. Permission is given on all grounds."

10. The Respondent filed a rule 24 response responding to the grounds as follows:

"3. It is submitted that the judge gave correct, adequate and sustainable reasons for dismissing the appellants' appeals and the grounds of appeal amount to mere disagreement with the decision.

4. Ground 1 does not establish that the judge engaged in speculation. The statement of the judge at 22 is correct, the fact of money being transferred does not show dependency, as he goes on to consider it also requires evidence of the money being used to meet their essential needs. As he says money could've been sent for other reasons.

5. In response to Ground 2 it is submitted that the judge is entitled to look at the historic position to establish the credibility of money transfers beginning shortly before the applications being made. Particularly where the documentary evidence is at odds with the sponsors oral evidence on the issue. This was not the judge requiring evidence of historic dependency but looking holistically at the case.

6. It is submitted that the finding that the money being sent was not used to meet the appellants essential needs was open to them.

7. In response to ground 4 the judge correctly decided that the first appellant's appeal could not be converted to an EA regulations appeal. Applying Sadiqua and Batool he found it was their responsibility to submit the correct application, not for the respondent to enquire with them about this and once and EUSS decision is made that is the only route of appeal which flows from it. To have decided to the contrary would've been an error of law. The reference to the transitional provisions is entirely misguided as the appeal was not brought under the EA regulations.

8. The respondent requests an oral hearing."

The Hearing

11. The matter came before me for hearing on 12 September 2023.

12. Ms Arif attended for the Respondent and Mr Broachwalla attended for the Appellants.

13. Time was spent checking that both of the representatives and I had the same bundles that were before the Judge. Ms Arif sent a copy of the relevant Appellants' bundle to Mr Broachwalla along with the rule 24 response and, having reviewed both, he was happy to proceed thereafter.

14. I said I could not see a basis on which an anonymity direction had been made by the Judge and proposed lifting it. Neither representative had any objection, it being suggested that the direction had originally been made simply because the case involved children. Having had regard to the latest Presidential Guidance Note concerning Anonymity Orders and Hearings in Private, I do not consider there is sufficient reason to justify a departure from the principles of open justice

in this case. I therefore lift the anonymity order made by the Judge in the First-tier Tribunal.

15. Mr Broachwalla made submissions, adding little more to the grounds as they had been stated in the application for permission to appeal dated 4 April 2023. The only additional points were as follows:

(a) As regards grounds 1 and 2, he said the Sponsor was present and gave oral evidence at the hearing before the Judge, yet the Judge never really considers that evidence. As the Sponsor was unrepresented, the Judge should have asked him why there was a lack of evidence in terms of bank statements and concerning the First Appellant's separation from her husband. I asked as to the materiality of ground 1 if the Judge found against the Appellants for other reasons. Mr Broachwalla said the Appellants should have been told whether dependency was accepted or not, otherwise they cannot raise a challenge.

(b) As regards ground 4, he referred to the case of 'Kabir' mentioned in the case of Sadiqua. He said the facts here are analogous to Kabir given both of the children applied correctly under the EEA Regulations. He said it was obvious that the First Appellant should also have applied under the EEA Regulations, as this can be inferred from the fact that the children did. I asked what evidence was before the Judge to show that the First Appellant had in fact intended to apply under the EEA Regulations rather than the EUSS such as a cover letter or witness statement. He admitted there was none, he relies simply on the fact that the children's applications were made under the EEA Regulations.

16. Ms Arif responded invited me to dismiss the appeal on the basis that the Judge's decision disclosed no material errors of law and the grounds mounted to mere disagreement. She took me through the rule 24 response and added that:

(a) As regards ground 1, [21] of the Judge's decision acknowledges the evidence of transfers so the Judge clearly took everything into account when making his findings. [27] concludes that the Appellants have not demonstrated dependency after weighing all the evidence.

(b) As regards grounds 2 and 3, [12] shows the Judge took the Sponsor through the evidence so was aware that the Sponsor was not represented; in [23]-[27] the Judge weighs up all the evidence and it was open to him to find a lack of evidence to show dependency. Although the Judge does not specifically mention some of the documentary evidence, he makes clear he has considered all of it. He has given his reasons and cannot give reasons for his reasons.

(c) As regards ground 4, [13]-[15] clearly deal with this point.

17. In response Mr Broachwalla reiterated that there is speculation in [22] and under the case of MK (citation below), all findings have to be supported by sufficient reasons. He was content, if any material error were found, for the appeal to be kept in the Upper Tribunal for remaking.

18. At the end of the hearing, I reserved my decision.

Discussion and Findings

19. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.

20. I also remind myself of the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), heard by the then President of this Chamber as a member of the panel:

> "(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
>
> (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

21. I shall first discuss those grounds relating to the First Appellant.

22. At the outset of his decision, the Judge states:

> "2. Although these appeals have been listed together the applications were made on different bases. On 15 October 2022 T made an application for leave to enter the United Kingdom as the sister of the sponsor Mr Syed Nygah Hussain, a national of Spain. Her application was made under Appendix EU (Family Permit). The application was refused on 4 December 2020".
>
> 3. Her application was refused because a sister is not a family member under Appendix EU (Family Permit).
>
> 4. Her two children both made applications on 14 October 2020 as the extended family members of the sponsor. Both applications were made under regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the EEA regulations"). Both applications were refused on 9 December 2020.
>
> 5. Their applications were refused because the respondent was not satisfied that the appellants had demonstrated that they were dependent on the sponsor."

23. The Judge correctly sets out the applicable burden and standard of proof in [7] and [8].

24. His findings concerning the First Appellant are as follows:

> "13. She had applied under Appendix EU (Family Permit). The application had been refused because to succeed she would need to be a family member of the appellant. Under Appendix EU (Family Permit) a sister is not a family member. It is not clear why she made the application which she did. The Sponsor said that he had been legally represented in the applications.
>
> 14. The cases of Saddiqa (other family members: EU exit) [2023] UKUT 00047 and Batool and others: EU exit) [2022] UKUT 219 have decided that where the appellant has made an application under Appendix EU (Family Member) the respondent is not obliged to consider the application under the EEA regulations instead, or to point this out to the appellant. A decision to refuse an application made under Appendix

> EU (Family Member) on this basis does not breach an appellant's rights under the Withdrawal Agreement.
>
> 15. In respect of T therefore she simply does not meet the requirements of Appendix EU (Family Permit) and her appeal must fail for that reason".

25. Paras 71 to 72 of the case of Batool cited by the Judge indeed confirm that it is not possible to invoke sub-paragraphs (e) and (f) of Article 18 of the Withdrawal Agreement "as authority for the proposition that the respondent should have treated one kind of application as an entirely different kind of application". That case also confirmed that it was not disproportionate for the Secretary of State to "devise and operate a system which draws attention to the two fundamentally different ways in which a family application should be made, and which then determines applications by reference to what an applicant is specifically asking to be given".

26. The headnotes of Siddiqa takes this further by stating:

> "(2)…Accordingly, consistently with the approach taken by the Upper Tribunal in Batool, Article 18(1)(o) did not require the respondent to treat the applicant's application as something that it was not stated to be; or to identify errors in it and then highlight them to her".
>
> (3) Annex 2.2 of Appendix EU (Family Permit) enables a decision maker to request further missing information, or interview an applicant prior to the decision being made. The guidance given by the respondent as referred to in Batool at [71] provides "help [to] applicants to prove their eligibility and to avoid any errors or omissions in their applications" for the purposes of Article 18(1)(o). Applicants are provided with "the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omission" under Article 18(1)(o). In accordance with Batool, Article 18(1)(o) did not require the respondent to go as far as identifying such deficiencies, errors or omission for applicants and inviting them to correct them. This is especially so given the "scale of EUSS applications" referred to in Batool at [72]. This provides a good reason for Article 18(1)(o) to be read narrowly to exclude errors or omissions of this sort, and this was the effect of the approach taken by the Upper Tribunal in Batool."

27. In Siddiqa, as in this appeal, an out-of-country application was made by a sister to join her brother in the UK and the "type of visa / application" specified was "European Family Permit". The applicant in that case was refused on exactly the same basis as the First Appellant has been refused in this appeal i.e. that she had not provided sufficient evidence to prove that she was such a family member. The arguments raised before this Tribunal in that appeal were the same as those being argued before me now (i.e. that an application made under the EUSS should be treated as one made under the EEA Regulations) and the decision dealt with these arguments in their entirety. That included, at para 49, discussion of the correct basis for bringing an appeal refusing an application made under the EUSS as opposed to the Regulations.

28. Mr Broachwalla confirmed there was no evidence, aside from the fact that the children applied under the EEA Regulations, to indicate that the First Appellant intended to also apply under those Regulations. I too cannot see that the First Appellant herself has anywhere said she intended to use a different form from the form she used, or that she intended to apply under the EEA Regulations instead of the EUSS. Having applied for her children under the EEA Regulations, it is not clear why she did not also apply under them herself. The mere fact that she did so cannot be taken, without more, as an indication that she intended to apply

under the Regulations too. It can just as easily be said to indicate the contrary. There is therefore no evidence to support the submission that the application under the EUSS was made in error. As such, there is therefore no basis on which I could conceivably distinguish her case from the ruling in Siddiqa.

29. Mr Broachwalla referred to a case of 'Kabir' mentioned in Sidiqua; this reference appears to be erroneous as no such case is mentioned. I suspect he intended to refer to the case of Khan v SSHD & Anor [2017] EWCA Civ 1755 which is mentioned in paras 25 and 37 of Sidiqua. However, Khan was found not to assist the applicant in Sidiqua such that I fail to see how it could assist the First Appellant here either, given what I have said above about a similar factual matrix applying.

30. On this basis, the Judge's findings in [13]-[15] of his decision are correct and disclose no error. I therefore uphold these findings and the Judge's decision to dismiss the First Appellant's appeal.

31. It has not been suggested to me that the appeals of the Second and Third Appellants cannot be addressed in their own right if the First Appellant's appeal fails, which it has. As above, the appeals of the Second and Third Appellant were made on a different legal basis to that of the First Appellant and so, even though some of the facts are shared, I find they can be so dealt with.

32. I therefore turn to the grounds relating to the Second and Third Appellants' appeals.

33. As above, the Judge correctly confirmed at [4] that the applications fell for assessment under regulation 8 of the EEA Regulations.

34. As regards what dependency entails, in Latayan v SSHD [2020] EWCA Civ 191, Jackson LJ said:

> "23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: Jia v Migrationsverket Case C-1/05; [2007] QB 545 at [37 and 42-43] and Reyes v Migrationsverket Case C-423/12; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of Reyes v SSHD (EEA Regs: dependency) [2013] UKUT 00314 (IAC) , dependency is a question of fact. The Tribunal continued (in reliance on Jia and on the decision of this court in SM (India) v Entry Clearance Officer (Mumbai) [2009] EWCA (Civ) 1426):
>
> > "19. … questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."
>
> Further, at [22]
>
> > "… Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. …"

35. Whether the Second and Third Appellants are dependent on the Sponsor is therefore a factual question for the Judge to have assessed on the evidence before the Tribunal. The burden rested upon those Appellants.

36. It is clear from the authorities that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. Families often send money to each other, even regularly, across international borders and that can be for a whole range of reasons. Instead, there is a requirement of dependency to meet essential living needs, which, as per the above case, "must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions".

37. The Judge sets out the background to the applications in [18] – [20], following which he analyses the evidence of dependency at [21] - [27]. At [21] – [22] the Judge appears to accept the fact of the transfers. Whilst the phrasing at [22] could have been more explicit, the Judge's finding is essentially that the money could have been sent for reasons other than dependency. In other words, it had not been proved that the money had been sent to pay for the Appellants' essential needs. Even if this finding were made in error (which I discuss further below), I do not find that it is material in itself given a number of other matters were considered in reaching the conclusion that dependency had not been proved on balance. These include, for example, at [23] that there was no documentary evidence of payments being made whilst the Sponsor was living in Spain, at [24] that no bank statements had been provided and there was no evidence to show the Sponsor owned the Spanish property occupied by the Appellants.

38. In this regard, the Appellants argue that the Judge placed undue weight on the lack of evidence concerning these factors. It is correct that whether more evidence could have been provided is not the correct question to ask; it is almost always the case that more evidence could be provided. The question to be asked is whether the evidence provided is sufficient to show dependency on the balance of probabilities, both as at and continuing from the date of application.

39. In conducting this assessment, the Judge was entitled to look at whether there was any documentary evidence to support what the Sponsor said in the round. This included assessing whether there was any evidence to support the assertion that he had supported the Appellants whilst he was in Spain. This went to whether or not the Appellants were credible in saying they had been dependent for as long as they had (mentioned in para 4 of the First Appellant's witness statement), which fed in to the weight to be attached to their evidence as a whole. As such, the position with historical support in Spain was not an immaterial factor, although it was also not a matter which was determinative in its own right. I cannot see that the Judge placed undue weight on this individual factor; rather it was just one amongst other factors he considered when reaching his conclusions.

40. For the same reason, the Judge was entitled to look at the circumstances in Pakistan. At [19] the Judge sets out the Sponsor's oral evidence that:

> "[The First Appellant] had been married and lived with her husband and children until about the middle of 2019 when she and her husband broke up. After that she had gone to live with their parents, who are both elderly, in the family home. This was owned by the sponsor. His sister and the children were entirely dependent."

41. By saying that evidence concerning the separation of the First Appellant from her husband, and from her parents, could have been provided, the Judge appears to be simply pointing out that this had not been provided. His discussion of these things is not without foundation, as it goes to the allegations made by the Sponsor in his oral evidence and also the refusal letters concerning the children in saying the Respondent would expect to see evidence to support the claimed dependency (first sentence of [24]). Discussing the absence of such evidence led to the Judge's finding at [25] that:

> "Without reliable evidence as to the financial circumstances of the family it is not possible to say whether the family is dependent on the sponsor for at least part of its essential needs".

42. Although the Sponsor was not represented at the hearing, it was not the role of the Judge to question the Sponsor on the evidence other than for the purposes of clarification. To have gone beyond this would have risked the Judge 'descending into the arena', particularly since the Respondent was represented at the hearing and it is was the role of her representative to test the evidence in cross-examination.

43. Having said that, I note there are several pieces of evidence contained in the bundles that were before the Judge which arguably did go towards dependency, such as electricity bills, school fee receipts and receipts for clothing, jewellery and grocery items. There was also evidence of the Sponsor's employment and earnings in the UK as well as his bank statements and a tenancy agreement. The First Appellant's witness statement at para four says:

> "We have provided to the court documentation that from the monies that we receive from my brother we are able to pay for household costs including utility bills, food, clothes etc. "

44. Whilst it is trite that a judge need not refer to every single piece of evidence before them when reaching their decisions, in accordance with MK cited above, sufficient reasons need to be given as to why no weight has been attached to evidence, if this is found to be the case.

45. There is no indication in the Judge's decision that he did have regard to the First Appellant's witness statement nor the bills and receipts I have mentioned above. As he instead refers only to the evidence which could have been provided, the Judge appears not to have reached his conclusions by looking at all of the evidence that was in fact before him.

46. This is an error which is material because the sole ground for refusing the Second and Third Appellants was that they had not provided sufficient evidence of dependency. Had the Judge properly considered all of the evidence before him, including the bills, receipts, witness statement and evidence of the Sponsor's financial position in the UK, it cannot be said with certainty that he would have reached the same conclusion as to whether dependency had been sufficiently proved.

47. I therefore find this is a material error.

Conclusion

48. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law but find that they are confined to the findings made concerning the Second and Third Appellants only; the findings concerning the First Appellant and the dismissal of her claim are sound.

49. I therefore find that the decision of the Judge involved the making of an error of law and must be set aside for a fresh decision as regards the claims made by the Second and Third Appellant.

50. As well as addressing dependency, the parties will need to have regard to the best interests of the Second and Third Appellants in applying to come to the UK in circumstances where their mother's application has failed. This is to the extent that their bests interest are relevant pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009 as applied in, for example, Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88.

51. In the circumstances, and given the limited issues and extent of fact finding required, I consider that the appropriate course of action is for appeal to be listed to be remade in the Upper Tribunal on a date to be fixed.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside for remaking only as regards the Second and Third Appellants' claims.

2. I make the following directions:

   (a) Any additional material on which either party seeks to rely must be served on the other party and on the Upper Tribunal at least 10 working days before the hearing. Such material must be set out in a properly indexed and paginated bundle, in electronic form.

   (b) If an interpreter is required, this must be requested in writing at least 2 working days before the hearing.

   (c) The parties must prepare and serve 5 working days before the hearing, brief skeleton arguments in electronic form addressing the Second and Third Appellants' claims.

3. No anonymity direction is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
19 September 2023