



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003489
First-tier Tribunal No: EA/11883/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of May 2024

Before

**UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

**MONOWARA BEGUM
(NO ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohammed, Taj Solicitors

For the Respondents: Ms Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 April 2024

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DECISION AND REASONS

Background

1. The Appellant is a national of Bangladesh who was born on 5 June 1966. On 3 November 2022, she made an application for an EUSS Family Permit under Appendix EU (Family Permit) to the Immigration rules on the basis that she is a 'Family member of a relevant EEA citizen'. That application was refused by the Respondent for reasons set out in a decision dated 3 November 2022. A

previous application made by the Appellant was refused by the Respondent on 19 March 2021.

2. The Appellant claims to be a family member of an EEA national. Her sponsor is Aleksandra Joanna Wisniewska (“the Sponsor”), a national of Poland. The Appellant’s son, Masudur Rahman, is married to the Sponsor. They had an Islamic marriage in 2018 and the marriage was lawfully registered on 11 December 2021. The Appellant claims she is financially dependent on her daughter-in-law.
3. The Appellant’s appeal against the decision of 3 November 2022 was dismissed by First-tier Tribunal (“FtT”) Judge Borsada (“the Judge”) for reasons set out in a decision promulgated on 12 May 2023.
4. On 8 June 2023 the Appellant appealed the Judge’s decision. Permission to appeal was granted by Tribunal Judge J K Swaney on 27 July 2023. The Respondent filed a Rule 24 response dated 19 September 2023 accepting that the Judge’s decision was vitiated by material error of law such that it must be set aside. At a hearing before us on 16 January 2024, the Respondent confirmed this position.
5. We therefore set aside the Judge’s decision in our decision promulgated on 25 January 2024, ordering that it be remade in the Upper Tribunal. A hearing before us was scheduled on 16 April 2024 to this end.

The Hearing

6. The Appellant’s son, Masudur Rahman, and the Sponsor, Aleksandra Joanna Wisniewska, both attended and gave oral evidence with the use (respectively) of Bengali and Polish interpreters. The Sponsor left the room while Mr Rahman gave evidence.
7. It was confirmed that no further evidence had been provided since the previous hearing, nor had any updated bundle been filed by the Appellant or her representatives, such that the Respondent’s bundle Parts A-D contained all of the relevant documents.
8. It was agreed that the sole issue in dispute is whether the Appellant is dependent on the Sponsor in accordance with the EU Settlement Scheme as set out in Appendix EU (Family Permit) of the Immigration Rules, the application having been made on 6 August 2022.
9. We have had regard to all the oral and documentary evidence and considered this and the submissions even where not specifically mentioned.
10. The oral evidence and submissions are a matter of record. The main points arising were as follows:

Oral evidence – Appellant’s son, Mr Rahman

11. Mr Rahman confirmed he provided a witness statement dated 6 March 2023 which was true and could be relied upon as his evidence in chief. It was noted that this statement was written in English with no certificate of translation. Mr Mohammad was unable to explain the reason for this failure to comply with procedural rules.

12. Mr Rahman gave evidence that he does not send the Appellant an exact amount of money, it fluctuates depending on what she needs; he knows the amounts of her bills, rent, food and other costs because she tells him; some bills are included in the landlords package; the rent fluctuates between 12,000 and 15,000 Bangladeshi taka; his mother had lived at her address for 6-7 years, this was what he remembered despite the landlord's statement saying she had lived there since May 2010.
13. In terms of the bills included in the landlord's package, he said the caretaker employed by the landlord takes the cash from the Appellant, and then puts it towards the bills and pays the landlord; he was unsure of the caretaker's living arrangements.
14. He confirmed he came to the UK in November 2009 as a student studying accounting; he did not ask what his mother did for support at the time but there is no other support such as from the government and he has no siblings; initially the Appellant had some properties which were sold but she now has nothing left and no savings; the properties were in the village and inherited from her father; she sold them to pay for medical and other expenses in around 2013-2014, or maybe 4 or 5 years after he arrived in the UK; he did not know how much they were sold for.
15. He was taken to the fact that his witness statement says the properties were sold in order to send him to the UK, which was different from what he had just said. He said that the property was in 3 or 4 portions which were sold over time as needed, none of them are still owned; his mother used to live in one but he does not remember when this one was sold, he never asked her.
16. He said the Appellant used to have brothers but they passed away in, roughly, 2014 and 2016; she used to have help from them when they were alive.
17. He confirmed he only sent money to the Appellant using bank transfers; he did not know why her bank statements showed several cash deposits, some for substantial amounts; he said he had never asked her and speculated that perhaps she had borrowed some money from somewhere.
18. He was unable to clarify when he and his wife became the Appellant's sole source of income, he just started sending money when he could, meaning sometimes she needed money and he sent it and sometimes she did not so he did not send it; he thought he started covering everything after her brothers passed away (in 2014 and 2016).
19. He did not know the reason why there are cash deposits showing in 2018. He said the reason why the number of transfers has increased over the years is because his mother is ageing and more regular doctor appointments are needed.

Oral evidence – Sponsor, Ms Wisniewska

20. The Sponsor confirmed she provided a witness statement dated 6 March 2023 which was true and could be relied upon as her evidence in chief. She said she had known her partner for 7-8 years, he started supporting the Appellant a few years ago, she did not know when but assumed it was before their relationship started as the Appellant does not have anyone else; Mr Rahman sends his mother around £200 a month for everyday living expenses, rent,

groceries, medication, she does not know how much the rent is; Mr Rahman does not have any other relatives in Bangladesh.

21. She confirmed that she was not working at the time of application in August 2022, Mr Rahman was working at the time and they have joint finances so they paid together.

Submissions

22. Ms Arif said she continued to rely on the Refusal Letter. In essence, she said that the Appellant had not proved that she is genuinely dependent on the Sponsor as claimed. She said the oral evidence was not credible due to the many inconsistencies and vagueness of the accounts given, and overall there is insufficient evidence of support being sent which is used to meet the Appellant's essential needs. Nowhere is it set out what the Appellant needs are, there is little in the way of documentary evidence to support what is said, the content of landlord's statement is at odds with the oral evidence and we do not know how much rent is paid; the money transfer receipts are sporadic and are not sufficient in themselves; the Appellant's bank statements show she is always in credit which does not suggest that she is suffering hardship or actually needs support, showing many unexplained cash deposits for large amounts; it appears she can support herself without the help of the Sponsor and her son. The son and Sponsor have also not shown that they can afford to support the Appellant.
23. Mr Mohammed replied to say matters are to be assessed at the date of application such that everything occurring before this date is irrelevant; objective evidence has been provided to support what is said in terms of most transactions in Bangladesh being in cash and concerning elderly widows struggling to survive without support; the money transfer receipts clearly show that money is being sent to support the Appellant in meeting her essential needs. He accepted that there is no medical evidence going towards the Appellant's health conditions, what medication she may need and how much this costs. He confirmed that the Appellant's witness statement was taken from the Appellant on the telephone by the solicitor using the Appellant's son as a translator. In essence, he asked us to accept the documentary and oral evidence as credible and allow the appeal.
24. We asked that Mr Mohammed provide, by 4.00pm on the date of the hearing, a schedule showing the amounts sent and received as originally ordered to be provided in the directions contained in our previous decision ("the Schedule"). The Schedule was duly provided and we have considered it as part of the evidence overall.

Legal framework

25. The Appellant's application and Refusal Letter were both made after the end of the transitional period following Britain's exit from the European Union, which ended at 11pm on 31 December 2020.
26. The Appellant brings this appeal under The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. The right of appeal is provided for at Regulation 3 and the grounds upon which this appeal may be brought are found at Regulation 8. We do not set out these provisions here as they are not in dispute.

27. The said regulations refer to the term “residence scheme immigration rules” which is not defined therein. Rather, it is defined at section 17 of the European Union (Withdrawal Agreement) Act 2020, which states:

“Interpretation: Part 3

- a. In this Part, “residence scheme immigration rules” means—
 - i. Appendix EU to the immigration rules except those rules, or changes to that Appendix, which are identified in the immigration rules as not having effect in connection with the residence scheme that operates in connection with the withdrawal of the United Kingdom from the EU, and
 - ii. any other immigration rules which are identified in the immigration rules as having effect in connection with the withdrawal of the United Kingdom from the EU.
- b. In this Part, “relevant entry clearance immigration rules” means any immigration rules which are identified in the immigration rules as having effect in connection with the granting of entry clearance for the purposes of acquiring leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules.
- c. In this Part, reference to having leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules include references to having such leave granted by virtue of those rules before this section comes into force”.

28. The relevant parts of Appendix EU (Family Permit) are as follows:

“FP3. The applicant will be granted an entry clearance under this Appendix, valid for the relevant period, by an entry clearance officer where:

- i. A valid application has been made in accordance with paragraph FP4;
- ii. The applicant meets the eligibility requirements in paragraph FP6(1), (2) or (3); and
- iii. The application is not to be refused on grounds of suitability in accordance with paragraph FP7.

FP6. (1) The applicant meets the eligibility requirements for an entry clearance to be granted under this Appendix in the form of an EU Settlement Scheme Family Permit, where the entry clearance officer is satisfied that at the date of application:

- d. The applicant is a specified EEA citizen or a non-EEA citizen;
- e. The applicant is a family member of a relevant EEA citizen;
- f. The relevant EEA citizen is resident in the UK or will be travelling to the UK with the applicant within six months of the date of application;

....

FP9. (1) Annex 1 sets out definitions which apply to this Appendix. Any provision made elsewhere in the Immigration Rules for those terms, or for

other matters for which this Appendix makes provision, does not apply to an application made under this Appendix.

Definitions

“family member of a relevant EEA citizen”

a person who has satisfied the entry clearance officer, including by the required evidence of family relationship, that they are:

...

- g. the child or dependent parent of the spouse or civil partner of a relevant EEA citizen, as described in subparagraph (a) above, and;
- h. the family relationship of the child or dependent parent to the spouse or civil partner existed before the specified date...; and
- i. all the family relationships continue to exist at the date of application; or

...

“dependent parent”

- i. the direct relative in the ascending line of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; and
- ii. (unless sub-paragraph (c) immediately below applies):

dependent on the relevant EEA citizen or on their spouse or civil partner:

(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 on the qualifying British citizen (or on their spouse or civil partner) at the date of application or, where the date of application is after the specified date, at the specified date, and (unless the qualifying British citizen is under the age of 18 years at the date of application or, where the date of application is after the specified date, the qualifying British citizen was under the age of 18 years at the specified date) that dependency is assumed; and

“specified date”

(where sub-paragraph (b) below does not apply) 2300 GMT on 31 December 2020”.

29. Although we were referred to the case of Siew Lian Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383, there is more recent Court of Appeal authority on dependence, Latayan v SSHD [2020] EWCA Civ 191 which 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."

30. 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. ..."

[24] As to the approach to evidence, guidance was given by the Upper 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."

31. The burden of proof is on the Appellant to prove the facts she alleges and the standard is the balance of probabilities.

Discussion and Findings

32. The Appellant claims to be the dependent parent of the spouse or civil partner of a relevant EEA citizen.
33. The Refusal Letter does not take issue with the Sponsor being a EEA national (Polish) residing in the UK. Nor does it take issue with any of the relationships concerned. The Respondent accepted in the rule 24 response produced for the error hearing that Mr Rahman received a residence card valid from 3 July 2019 to 3 July 2024 as the unmarried partner of the Sponsor, and that they later married in the UK such that the family relationships concerned fall within the scope of Appendix EU (Family Permit).
34. We need to decide whether the Appellant has shown that she is the dependent parent of the Sponsor/Mr Rahman. As the application was made after 1 July 2021, dependency is not assumed under (a)(i)(cc) of the definition of 'dependant parent' in Appendix EU (Family Permit).
35. The Refusal Letter accepts that money transfers have been provided for the period of January 2022 to August 2022 but alleges that insufficient evidence has been provided of the Appellant's own financial circumstances in Bangladesh in order to assess whether the situation is one of genuine dependency.

36. The application states that the Appellant is a widow with no source of income or savings in Bangladesh, she is financially dependent on the Sponsor who regularly sends money (£250 a month) to meet the Appellant's essential living needs.
37. We note from the Schedule that money transfers for around £200 were sent to the Appellant roughly every two months during 2020. There is a gap of around six months between December 2020 and June 2021 for which time we do not have any transfers; no explanation for this gap has been provided. Money is then sent roughly every month between June 2021 and November 2022, for differing amounts that range between £172 and £339.84. The Schedule shows that all of these amounts have been sent to the Appellant's Brac bank account, with the large majority of relevant bank entries having been evidenced.
38. We accept from this evidence that the Sponsor and Mr Rahman, either as individuals or jointly, have sent the Appellant sums of money on a (mostly) regular basis since January 2020.
39. The Appellant has provided some objective evidence confirming that widowed women in Bangladesh are vulnerable to poverty, and that remittances (particularly from adult sons overseas) for elderly people are seen as very important in meeting daily expenses. There is also objective evidence stating that 96% of transactions in Bangladesh are made in cash such that there are unlikely to be receipts available for them. This evidence has not been challenged by the Respondent. Whilst we accept it is supportive of the Appellant's case in a general sense, it is still for her to prove that her individual circumstances are as she says they are.
40. The Appellant has provided a typed, signed statement in English dated 6 March 2023. It does not contain a statement of truth. As was discussed at the hearing, there is no certificate of translation and Mr Rahman's oral evidence was that this statement was taken over the phone with him acting as translator. We note that the statement says:

"when this letter was prepared , my son ... called my mobile and Mr Motiur Nabid [the solicitor's caseworker] explained the letter to me line by line, word by word in the presence of my son".
41. There is nothing from Mr Nabid confirming he was the one who first took down the Appellant's statement. These factors immediately limit the weight which we can attach to the statement as we cannot be sure that the words contained therein are the Appellant's independent evidence, free from the input of Mr Rahman.
42. The statement says the Appellant is 56 years old and living alone with no employment or source of income except the remittances sent by Mr Rahman and the Sponsor. She says:

"They send the remittance sometimes to my bank account and sometimes by pin number which I withdraw in cash from the bank and deposit the money to my bank account after paying my rent and other costs. I also sometimes deposit the entire funds to the account and then withdraw when required to pay rent or other essential costs".

43. The description that money is sent using two different methods (direct to her bank or cash by pin number) is at odds with Mr Rahman's oral evidence that he only sends money by transfer. He was unable to explain this inconsistency which raises questions about the reliability of the evidence.
44. Mr Rahman was also unable to explain why the Appellant's bank statements show several substantial cash deposits made over several years. Whilst we note there do appear to be fewer large cash deposits in recent years, there are still several unexplained transactions which are not remittances, such as that on an illegible date in November 2022 (page 48 Appellant's bundle/pdf119 composite bundle) showing an account transfer of 128,799.55. This transaction, which appears to show money being taken out and transferred back in, appears to indicate the Appellant has another bank account.
45. Mr Rahman did not know who any of the cash deposits or other transactions were from and speculated that his mother may have borrowed some money, but admitted he had not asked her about them. This raises questions about the genuineness of the dependency as it appears the Appellant receives money from other unexplained and unevidenced sources, and Mr Rahman is asserting he knows about his mother's living circumstances whilst also confirming he has not asked questions about significant matters relating to her finances.
46. Mr Rahman also confirmed he had not asked about the sale of a property which his mother had inherited and he was unable to confirm when the various parts of this property were sold and how much they realised. His oral evidence, that the properties were sold in order to provide the Appellant with funds for medicine and other expenses, was at odds with his written evidence, being that they were sold to fund his journey to the UK. He explained this inconsistency by saying both things were true, which we took to mean one or more parts of the property were sold to fund his journey, and the remainder were sold to fund other items. However, if this is the case, we do not know why it is not clearly explained in the written documents and the question remains as to when the various pieces were sold and how much they realised. He said no money was left from the property being sold, but we do not consider this statement to be reliable given he admitted he had not asked his mother about the sale proceeds nor the deposits in her bank. The Appellant's written statement does not mention the properties at all.
47. As highlighted at the hearing, the content of the landlord's statement as to when the Appellant moved in (May 2010) is at odds with Mr Rahman saying she moved in 4-5 years after he arrived in the UK 2009, which would be 2013-2014. Nowhere does it state in clear terms what rent the Appellant pays. The landlord's statement does not set this out and Mr Rahman said it fluctuates. Mr Rahman also said that a caretaker collects sums on behalf of the landlord. Whilst the landlord's statement confirms this, it is not something mentioned in the Appellant's statement. Again, these inconsistencies detract from the reliability of the evidence.
48. We note the landlord's statement says that he lives in Germany and the property is maintained by a caretaker. The landlord states that the Appellant "is a widow and living at this address alone". He mentions that sometimes the Appellant has failed to pay the rent in the past "as her son could not send money by time [sic]". It is unclear how he would know this information himself

if he lives in Germany such that it appears this may be information he has been told by others. He mentions some visits to Bangladesh but does not say when the last one took place. There is no evidence from the caretaker.

49. The evidence is very unclear as to when the Appellant became wholly dependent on the Sponsor and Mr Rahman. Neither witness was able to give a clear answer to this question and it is not something covered in the Appellant's statement. We consider such dependency is very unlikely to have commenced immediately or shortly after the death of the Appellant's husband given that this occurred in 1994 when Mr Rahman was only 11 years old. The Appellant has now been a widow for 20 years. We do not know whether she has ever been employed and if she was, when such employment ceased.
50. Mr Rahman said the Appellant was assisted by her brothers when they were alive which is again not mentioned by the Appellant or in any of the documentary evidence. Mr Rahman said the two brothers died in 2014 and 2016 respectively. If they were her only source of support after her husband's death, it would seem reasonable to assume Mr Rahman would become wholly responsible for the Appellant's expenses after the second brother passed in 2016 but Mr Rahman does not say this. There are also substantial cash deposits from unknown sources in 2018 which cannot be from the brothers given the dates and Mr Rahman could not explain them, such that they appear to indicate the Appellant has had some form of income besides him since her brothers passed away.
51. We note that the application was made on the basis that the Appellant relies on the support of the Sponsor. However, the Sponsor's contract of employment shows she only commenced employment on 1 February 2023 and she admitted at the hearing that she was unemployed at the time the application was made in August 2022. It therefore appears she was not actually the one supporting the Appellant at the time. Rather, the Sponsor said, it was Mr Rahman who was in work when the application was made. Mr Rahman's statement says "I was full-time employed previously and am currently self-employed as a domestic gas engineer." However no real information has been provided as to what work he has undertaken, with whom, when, and for what payment.
52. We note from the Sponsor's bank statement of February 2023 that she receives public funds of universal credit and child benefit. Her statement says she and Mr Rahman have a child together, she also has a child from a previous relationship and all of them live together. Nowhere is it stated what their incomings and outgoings are, nor whether they support anyone else besides the Appellant. Whilst they have provided a calculation of family income (in the format required under separate immigration rules which are not applicable to this appeal), they have not provided documentary evidence supporting the figures stated in that calculation.
53. We note there is no requirement of affordability in the relevant provisions of the EUSS. Ms Arif said such a requirement was contained in the Respondent's guidance however such guidance has not been produced in evidence and would not trump the requirements of the rules in any event. However, we consider we have not been provided with a clear picture of the circumstances of the Sponsor and Mr Rahman in the UK which goes to the reliability of the evidence overall.

54. There are assertions that the money sent covers the Appellant's accommodation, food and medication and some (but very few) receipts have been provided for grocery and medication items. But nowhere is it set out what exactly the Appellant's essential needs are, what amount is needed to meet these needs and how this compares to the sums of money sent by the Sponsor/Mr Rahman. It is unfortunate that this is the case, despite paragraph 9 of our error decision specifically reminding the Appellant's representatives that "simple evidence of money transfers may not be sufficient to establish dependency". Whilst the Respondent's guidance indicates that money transfers *might* be used as evidence of dependency, this does not mean that money transfers alone will be sufficient to prove dependency and the caselaw cited above confirms that evidence of financial support in itself is not sufficient.
55. Overall, and on balance, we do not consider that the criticism made against the Appellant in the Refusal Letter (that she has not detailed fully her and her family's circumstances) has been satisfactorily addressed. There is no real explanation of what the Appellant's essential needs are, what amount is needed to meet these needs, and how this compares to what she receives and she clearly has received income at various times from sources other than the Sponsor and Mr Rahman.
56. It follows that we do not find the evidence is sufficient to discharge the applicable standard of proof of the balance of probabilities. We find the Appellant has not shown she is dependent on the Sponsor in order to meet the requirements of Appendix FM (Family Permit) and the EUSS.

Notice of Decision

1. We remake the decision of the First-tier Tribunal which was set aside due to error, and remake it dismissing the Appellant's appeal.
2. No anonymity direction is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 April 2024

ANNEX: ERROR OF LAW DECISION



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

Case No: UI-2023-003489

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THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

**UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

**Monowara Begum
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr N Mohammed, Taj Solicitors

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 January 2024

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Bangladesh who was born on 5 June 1966. On 3 November 2022, she made an application for an EUSS Family Permit under Appendix EU (Family Permit) to the Immigration rules on the basis that she is a 'Family member of a relevant EEA citizen'. That application was refused by the respondent for reasons set out in a decision dated 3 November 2022. A previous application made by the appellant was refused by the respondent on 19 March 2021.
2. The appellant claims to be a family member of an EEA national. Her sponsor is Aleksandra Joanna Wisniewska ("the sponsor"), a national of Poland. The appellant's son, Masudur Rahman is married to the sponsor. They had an Islamic marriage in 2018 and the marriage was lawfully registered on 11 December 2021. The appellant claims she is financially dependent on her daughter-in-law.
3. The appellant's appeal against the decision of 3 November 2022 was dismissed by First-tier Tribunal ("FtT") Judge Borsada ("the judge") for reasons set out in a decision promulgated on 12 May 2023. At paragraph [6] of his decision, the judge said:

"I did not consider the case substantively on the evidence before me. In particular I did not hear oral evidence from either the sponsor or her husband and this was because of the matters raised by the respondent's representative in their submissions on a preliminary issue. I noted the respondent's representative's reference to the EU Rules and agreed with the interpretation that he gave it i.e. that the sponsor was not the lawful spouse of the appellant's son at the 'specified date'. I noted the Home Office Guidance but did not agree with Mr Shah that this said anything different from the EU Rules and in that regard I would in particular refer to page 125 of the guidance (see first bullet point). In those circumstances, the appellant's application was bound to fail and it was not necessary for me to consider the evidence any further."

THE GROUNDS OF APPEAL

4. The appellant claims the decision of the judge is vitiated by material errors of law. The respondent had refused the appellant's EUSS family permit application because the respondent was not satisfied that the appellant had provided adequate evidence to establish that she is dependent on a relevant EEA national. The focus of the appellant's preparation and evidence before the FtT was directed to that sole issue. The respondent's claim that the appeal should be dismissed because the sponsor was not legally married to the appellant's son prior to 31 December 2020 (the specified date) was a matter that was raised for the first time during the course of the hearing of the appeal. The appellant claims it was procedurally unfair for the judge to have permitted the respondent to rely upon a matter that had not been referred to in the

decision refusing the application, and in any event, the judge erred in his interpretation of the relevant rules.

5. Permission to appeal was granted by FtT Judge Swaney on 27 July 2023. Judge Swaney said:

“It is arguable that the judge erred in finding that the appellant was not the family member of a relevant EEA citizen solely on the basis of the fact that the marriage between the appellant’s daughter (*sic*) and the sponsor was not registered before the specified date without considering whether they were in a durable relationship. Subparagraph (e) of the definition of family member of a relevant EEA citizen is relevant to the appellant and applies to the dependent parent of the spouse or civil partner as described in subparagraph (a). Subparagraph (a) of that definition provides that spouse or civil partner includes a durable partnership that existed before the specified date and remained durable at the specified date. It is arguable that the definition is not limited in the way found by the judge.”

THE HEARING OF THE APPEAL BEFORE US

6. The respondent has filed a Rule 24 response dated 19 September 2023. The respondent refers to the definitions of ‘family member of a relevant EEA citizen’ and ‘required evidence of family relationship’ that are set out in Appendix EU (Family Permit). The respondent accepts that reading the requirements as defined, the appellant’s son had a residence card that was valid from 3 July 2019 until 3 July 2024 as an unmarried partner of a Polish national (the sponsor) and that in the circumstances, the appellant meets the definition of a family member. The respondent accepts the decision of the judge is vitiated by a material error of law and must be set aside.
7. It is common ground that the judge failed to address the issue that was raised by the respondent in her decision dated 3 November 2022. That is, whether the appellant has established that she is dependent on her sponsor.

DISPOSAL

8. Mr Lawson submits that in view of the nature of the error of law, the appropriate course, in fairness to the appellant, is that the appeal be remitted to the FtT for hearing afresh with no findings preserved.
9. Mr Mohammed objects to that course and submits the decision should be remade in the Upper Tribunal. He submits there is ample evidence of money remittances being sent by the sponsor and the appellant’s son, to her. We reminded Mr Mohammed that simple evidence of money transfers may not be sufficient to establish dependency and that by adopting the course he proposes the appellant loses the benefit of the two-tier Tribunal appeal procedure. He assured us that the appellant is aware of the need for wider evidence and that if the decision is remade in the Upper Tribunal, the appellant will not have the benefit of another appeal save to the Court of Appeal on a point of law.

10. We are prepared to accept, on the basis of the assurances given to us by Mr Mohammed that the appellant is aware of the consequences, that the appropriate course is for the decision to be remade in the Upper Tribunal.
11. The parties will be notified of a hearing date in due course.

NOTICE OF DECISION

12. The decision of First-tier Tribunal Judge Borsada is set aside.
13. The decision will be remade in the Upper Tribunal.

DIRECTIONS

14. The following directions shall apply:
 - (a) The appeal will be listed for hearing before the Upper Tribunal on the first available date after 28 days, with a time estimate of 2.5 hours.
 - (b) The appellant is required to notify the Tribunal **no later than 7 days after this decision is issued**, whether an interpreter is required at the further hearing of the appeal.
 - (c) **NO LATER THAN 10 WORKING DAYS** before the hearing, the appellant is to provide to the Upper Tribunal and the respondent a composite electronic bundle which complies with the [Guidance on the Format of Electronic Bundles in the Upper Tribunal \(IAC\)](#).
 - (d) The composite bundle must contain the following documents and must be structured in the following way:
 - Part A: The decision of the FtT which is under appeal
The decision of the FtT or Upper Tribunal granting permission to appeal
A copy of this decision.
Any other decision or order of the Upper Tribunal in the appeal.
 - Part B: Any further evidence relied upon by the appellant limited solely to the issue of dependence.
 - Part C: All documentary evidence relied upon by the appellant before the FtT
 - Part D: All documentary evidence relied upon by the Respondent before the FtT
 - (e) Where the appellant relies upon money remittances or other funds transferred to the appellant, the appellant shall provide a schedule identifying
 - (i) The date of the payment.

- (ii) The identity of the person making the payment
 - (iii) The identity of the person that received the payment
 - (iv) The relevant page in the composite bundle at which that payment is evidenced
- (f) **NO LATER THAN 5 WORKING DAYS** before the hearing, the appellant is to provide to the Upper Tribunal and the Respondent any skeleton argument upon which she intends to rely.

Any skeleton argument must:

- (i) Contain sequentially numbered paragraphs
- (ii) Be in not less than 12-point font
- (iii) Be as concise as possible, and not exceed 20 pages of A4
- (iv) Not include extensive quotations from documents or authorities
- (v) Be cross referenced to the composite bundle thus: [CB/x]

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 January 2024

