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

Case No: UI-2024-001391
UI-2024-001392

First-tier Tribunal No: EU/53663/2023
EU/53664/2023
LE/00582/2024
LE/00583/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 12th September 2024

**Before**

**UPPER TRIBUNAL JUDGE HOFFMAN**

**Between**

**Mr Dhirubhai Mulubhai Modhwadia**
**Mrs Vali Dhirubhai Modhwadia**
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellant: Ms A Bhachum Counsel instructed by Bhavsar Patel Solicitors
For the Respondent: Miss S Simbi, Senior Home Office Presenting Officer

**Heard remotely at Field House on 2 September 2024**

**DECISION AND REASONS**

1. The appellants appeal against the decision of First-tier Tribunal Judge Groom promulgated on 4 March 2024 dismissing their appeals against the respondent's decisions dated 18 May 2023 refusing their applications for leave to enter under Appendix EU of the Immigration Rules.

**Background**

2. The appellant are a husband and wife and are citizens of India. On 3 April 2023, they applied for family permits under the EU Settlement Scheme as the dependent close family members of an EEA citizen. Their sponsor was Mrs Savita Soma, their daughter-in-law, who is a Portuguese national. Mrs Soma is married to the appellants' son, Mr Sandipkumar Dhirubhai Modhvadiya.

3. In decisions dated 18 May 2023, the respondent refused the appellants' applications on the basis that she was not satisfied that the evidence available demonstrated that they were financially dependent on their sponsor for their essential living needs. The respondent said that the remittance receipts did not show a currency amount; that there was no evidence which detailed the couple's circumstances in India, including their income and expenditure; and that there was no evidence to show that the appellants had access to funds in a Bank of India account held by their sponsor.

**The appeal before the First-tier Tribunal**

4. The appellants exercised their right of appeal to the First-tier Tribunal and their case was heard by Judge Groom ("the judge") on 28 February 2024. The judge dismissed the appeals on 4 March 2024 having not been satisfied that the appellants had established that they are dependent on their sponsor.

5. The appellants were subsequently granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Saffer on 3 April 2024. The grounds of appeal argue that the judge (i) failed to reconcile, or overlooked, the evidence before her relevant to dependency; and (ii) failed to give reasons when finding that the sponsor and the appellants' son had given discrepant evidence.

**Findings – Error of Law**

6. In their first ground of appeal, the appellants argue that the judge failed to have proper regard to the evidence before her. The first point raised by Ms Bhachu, representing the appellants, was that at [8] the judge found that the evidence showed that the earliest date of the money transfers from the sponsor to the appellants was 23 January 2022. Ms Bhachu submitted that this was incorrect because the evidence demonstrated that an earlier payment had been made to the appellants on 4 May 2021 (see pdf page 75 of the stitched First-tier Tribunal bundle ("[FB/X]")). Ms Bhachu did not suggest that there were any more payments pre-dating January 2022, however, she argued that the judge made a material error of law because she relied on this at [15] when finding that there was no consistent oral or documentary evidence to show the transfer of funds earlier than January 2022. Furthermore, Ms Bhachu submitted that dependency could arise at any time and it was therefore irrelevant how early the transfers began.

7. The second, and I find stronger, point raised by Ms Bhachu was to do with the respondent's assertion that there was no evidence that the appellants had access to a Bank of India account in their sponsor's name. At [9], the judge found that bank statements had been provided for an Indian bank account but she appears to accept the submission of the presenting officer that the only name on the statement was that of the appellants' son. It is recorded that the appellants' son accepted that his father's name was not on the statements, but he maintained that the account was held jointly with his father. The judge makes no clear findings in relation to this point, although reading the decision as a whole it seems likely that the judge must not have been satisfied that the appellants had

access to the money in the Indian bank account. Ms Bhachu relied on a document from the Bank of India [FB/72] that matches the account number on the bank statements and also names both the first appellant and his son as the two account holders. She submitted that the judge had therefore made a mistake of fact because she failed to appreciate that the appellants did have access to the money paid into the account.

8. Miss Simbi, on behalf of the respondent, sought to argue that those points did not establish a material error of law because the judge nevertheless found at [12] that the appellants' son had been unable to explain how the appellants made up the difference between the £200 per month he sent them and their monthly expenditure of £300-£400. Furthermore, the judge was also not satisfied at [15] that the appellants have provided clear evidence of their income and their outgoings. Ms Bhachu argued that, at [12], the judge had failed to take into account that, firstly, the evidence was that not all of the money was sent directly by the sponsor and the son and that some of the funds were delivered to the appellants through friends and, secondly, that not all of the appellants' needs had to be met by the sponsor, only their essential needs.

9. I am satisfied that the judge was entitled to take into account the evidence of the appellants' son recorded at [12]. I am also satisfied that the judge was entitled to take into account at [8] the lack of evidence from the friends who travelled to India to give the appellants that money. However, the respondent's reliance on [15] is more problematic.

10. That is because it is clear that much of the appellants' case rested on the credibility of the evidence of their witnesses, i.e., the sponsor and their son. Yet, as argued in the appellants' second ground of appeal, at [13], the judge found that there are discrepancies between the evidence of the sponsor and the appellants' son without explaining what those were. Ms Bhachu said that this was contrary to the principle that it is necessary for judges to identify and resolve key conflicts in the evidence and explain their reasons: see Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC). While Ms Simbi submitted that [13] had to be read in the round with the rest of the decision, I am not satisfied that doing so sheds any light on what the discrepancies in the evidence of the witnesses were. I accept that the judge's failure to provide reasons as to why she found the witnesses had been inconsistent with each other amounts to a material error of law because that finding very likely led the judge to attach little weight to their evidence regarding the money they claimed to send to the appellants and what that money is used for at [15] and [16].

## Conclusion – Error of Law

11. For the reasons given above, I find that both of the appellants' grounds are made out. I cannot say that the judge's conclusions would have been the same had she not made those errors and I therefore set aside the decision of the First-tier Tribunal.

12. I am of the view that none of the findings of fact can be preserved. At the hearing, the parties were in agreement that, if I was to find an error of law, the appeal should be remitted to the First-tier Tribunal for a hearing de novo. Taking into account the nature and extent of the findings of fact required to remake the decision, applying paragraph 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal* I am satisfied that remittal is the appropriate course of action.

**Notice of Decision**

**The decision of the First-tier Tribunal involved the making of errors on a point of law.**

**The decision of the First-tier Tribunal is set aside with no findings preserved.**

**The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Nottingham Justice Centre, to be remade afresh and heard by any judge other than Judge Groom.**

**M R Hoffman**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**4th September 2024**