



IAC-AH-V1

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

Appeal Number: EA/03053/2020

THE IMMIGRATION ACTS

**Heard Remotely via MS Teams
On the 28 October 2021**

**Decision & Reasons Promulgated
On the 17 November 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**JAL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, counsel instructed by Waterstone Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge G A Black, promulgated on 12 May 2021. Permission to appeal was granted by First-tier Tribunal Judge O'Brien on 2 July 2021.

Anonymity

2. An anonymity direction was made previously and is reiterated below because appellant remains a minor.

Background

3. The appellant is the 16-year-old cousin of BA who is a Belgian national residing in the United Kingdom. She applied for an EEA Family Permit on 29 January 2020. That application was refused on 6 March 2020, and it is this decision which is the subject of this appeal. The Entry Clearance Officer (ECO) did not accept that the evidence provided showed that the appellant was dependent upon the EEA sponsor for her essential living expenses. The ECO also noted that the sponsor had a wife and dependent child yet earned only £693 per month, with rent of £1450 per month and his account was in overdraft and did not, therefore, accept that he was financially able to meet the appellant's essential needs as well as his own and that of his dependants.
4. An Entry Clearance Manager reviewed the decision of 6 March 2020 once the appellant's appeal was lodged. The original decision was maintained with the ECM making the following points. No evidence had been provided of the appellant's financial position, the account of the appellant's father did not show the receipt of funds from the sponsor, there was no evidence that the appellant's parents relied on support from the EEA national sponsor, that BA had previously sponsored his wife and a cousin, NS, to join him in the United Kingdom notwithstanding that on the visa application form it was stated that BA had not done sponsored anyone else.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge had sight of additional material submitted on behalf of the appellant and BA gave oral evidence, via CVP. The judge found BA to be an unreliable witness in several of respects but accepted that he had financially supported his family members albeit not specifically the appellant.

The grounds of appeal

6. The grounds of appeal raised one issue, namely that the First-tier Tribunal had failed to make relevant factual findings as to whether the financial support provided by the sponsor was necessary for the family as a whole, including the appellant, to meet its essential living needs.
7. Permission to appeal was granted on the basis sought.
8. In the respondent's Rule 24 response, received on 2 September 2021, it was accepted that the judge materially erred in failing "to make any finding on the central issue in the appeal: whether the appellant has shown material dependency on the sponsor." The said response noted that there was no challenge to the judge's findings at [12] which

should be preserved and that the case was suitable for retention at the Upper Tribunal for remaking.

The hearing

9. After brief discussion, I indicated that I accepted the respondent's concession and that, with the agreement of the parties, I would proceed to remaking given there was no challenge to the judge's findings. The parties made succinct submissions. Ms Harris made the following points. Despite the negative credibility findings, the judge found that the entire family were provided with financial support over many years. The only issue was the judge's finding that it could not be shown that the funds were for the appellant alone at [14]. There had been regular financial remittances while this was not enough on its own, there was evidence of telephone calls to the family as a whole because the appellant was a minor and did not have her own telephone. It was clear that there was emotional and financial dependency by the whole family. It did not have to be the case that the sponsor was providing all the income or that there were no other sources of income. The evidence of the appellant's father was that he had other income but that it did not cover essential needs and was topped up by the sponsor.
10. Mrs Aboni relied on the decision letter and argued that there was limited evidence regarding the financial support from the sponsor. She relied on the judge's findings at [12] regarding the vague evidence of the sponsor and submitted that he did not address the issues raised by ECO in refusing the application. The appellant had still not established dependency on the sponsor. She urged me to dismiss the appeal.

Decision on error of law

11. The respondent rightly conceded that there was a material error of law by the First-tier Tribunal. That error being the lack of a clear finding as to whether the appellant or her family as a whole was dependent upon the sponsor for their essential living needs. The judge was distracted by the fact that there was no discrete support for the appellant either financially or emotionally however this is an irrelevant factor in view of the lack of dispute as to whether the appellant was part of the family who received financial support. Consequently, the conclusion of the First-tier Tribunal is set aside, with all findings preserved.

Remaking

12. In considering this appeal, I have taken into consideration the submissions made before me as well as the contents of the parties' bundles before the First-tier Tribunal. I have also considered the judgment in *Bigia* [2009] EWCA Civ 79 as well as subsequent authorities as to the relevant test, that test being whether the appellant needed the material support of the Union citizen or his spouse in order to meet her essential needs.

13. I have carefully considered the evidence which was before the First-tier Tribunal. The sponsor, in his witness statement dated 30 April 2021, explains that he has been financially supporting the appellant since 2009 as her father (his uncle) had been struggling financially. In addition, he spoke to the appellant regularly on the telephone. Evidence of calls made to the appellant's family home was provided at [7] onwards of the appellant's bundle. In his earlier statement dated 19 February 2020, the sponsor gave more details regarding his uncle's business and the type of expenditure he undertook for the appellant's benefit, for example travel to school, clothing and school uniforms. In the appellant's statement dated 30 April 2021, she confirms the financial support received which she calculated at 53,060 BDT per annum (approximately £450) and provides a breakdown of the individual cost of items such as class fees, private tuition and medical costs.
14. The appellant's father (AB) provided a statement stating that his annual income from farming his land was 210,000 BDT (approximately £1780) and his expenditure was 240,000 BDT. A breakdown was provided. He expressed a desire for the appellant to be independent and support her family after moving to the United Kingdom. The appellant's cousin in Bangladesh (also the sponsor's brother), AH, confirmed that the sponsor had sent him money for the appellant's benefit via a mobile money transfer service.
15. The judge found at [11] that the sponsor made regular payments to the appellant's father and to AH, with reference to receipts dating from 2013 to the present and that there was evidence of regular telephone contact between the sponsor and the appellant's family. The judge had concerns as to the reliability of the evidence of the sponsor because his testimony was at times vague and there were inconsistencies in the accounts he had given. Of relevance to the issues of dependency is the sponsor's oral evidence that he was financially responsible for an additional married couple who were living in his house, a claim which had not been made previously. There were also inconsistencies in the evidence as to how many adults were living in the sponsor's home and who the sponsor was financially supporting. While these issues are relevant to the sponsor's overall credibility, I have placed little weight on the sponsor's living conditions in the United Kingdom as the focus of this appeal is on whether the appellant is dependent on the sponsor.
16. The judge's unchallenged findings at [12] of the decision include that the sponsor has failed to fully disclose his own circumstances which caused the judge to have concerns as to the reliability of his evidence in relation to the dependency issue. The judge found that the sponsor was unable to provide details regarding the rental income said to be received by the appellant's father, that there was no documentary evidence to support the claim that the appellant's father had suffered business difficulties in 2012, the statement of the appellant's father made no mention of land or rental income, there was no evidence as to how the appellant's father used the money for the appellant and the appellant had not substantiated the expenses listed in her statement with evidence.

17. The exception to the lack of supporting evidence was the medical letter signed on 10 February 2020 which referred to the appellant having attended hospital for multiple medical check-ups and treatment, paid for by the sponsor, however the sponsor told the judge that the appellant had not received any medical treatment.
18. The wildly differing accounts of the income source of the appellant's father undermine the claims as to dependency. The appellant's father said in his witness statement that he earns approximately £1700 per annum from working on his own farm, whereas the sponsor stated that the appellant's father rented his land to another person for "very little" money. That the sponsor denied the contents of the hospital letter regarding his payment for the appellant's treatment further undermines the credibility of the unsupported assertions made regarding the circumstances of the appellant and her family. In view of the inconsistencies as to the circumstances of the appellant and her family in Bangladesh as well as the absence of any reliable supporting evidence as to her essential needs or those of her family, on balance, I am not satisfied that the appellant is dependent upon the United Kingdom sponsor for her essential living needs. This appeal is therefore dismissed.

Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:
Upper Tribunal Judge Kamara

Date: 4 November 2021

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed:
Upper Tribunal Judge Kamara

Date: 4 November 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email