



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

Appeal Number: EA/05908/2019

THE IMMIGRATION ACTS

Heard at Field House (Via Teams)

**Decision & Reasons
Promulgated**

On 5 August 2021

On 15 December 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

MD AZIZUL ISLAM

Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Richardson

For the Respondent: Mr Walker, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of Bangladesh who was born on 4 January 1992. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 23 October 2019 refusing his application for a residence card. The First-tier Tribunal, in a decision promulgated on 20

April 2020, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had made a series of applications (the first in 2015), for a residence card as the extended family member of his uncle, Mr K Khan, an EEA national (hereafter 'the sponsor'). Permission was granted in the First-tier Tribunal by Judge Kelly. Judge Kelly considered that, whilst the judge had correctly stated the law as regards dependency, it was arguable that he had not applied that law to the facts as he found them. In particular, it is asserted by the appellant that the judge had dismissed the appeal, at least in part, because he found that the appellant had not been wholly reliant on the sponsor for financial support; the parties agree that 'total' dependency on a sponsor is not required it is necessary for an appellant to prove that he could not meet his/her essential needs without the support of the sponsor. The appellant also claims that the judge had been excessively concerned with identifying other sources of income which the appellant might have; an applicant may have several sources of income but still rely on an extended family member for essential needs.

3. The judge's conclusion as regards the test of dependency is at [20]:

I am in fact not persuaded, given the generally unsatisfactory nature of the evidence, that the appellant was [whilst living in Bangladesh before he came to the United Kingdom in 2011] in receipt of any financial support from the sponsor.

Significantly, in the previous sentence, the judge refers again to the correct test (dependency for essential needs) finding that he was 'wholly unpersuaded' that such dependency had existed whilst the appellant had been living in Bangladesh. At [21], the judge goes on to say that his findings at [20] are determinative of the appeal as 'the appellant cannot qualify as an EFM unless he can show he was dependent in Bangladesh' a statement of the law with which both parties agree.

4. I agree with Mr Richardson, who appeared for the appellant before the Upper Tribunal, that the central question in the appeal is whether the judge's conclusion at [20] has been supported by cogent reasons arising from findings of fact available to the judge on the evidence. In my view, it has. At [17], the judge sets out in detail what he later at [20] characterises as 'unsatisfactory' evidence. He notes that the receipts of payments adduced by the appellant do show the source of funds whilst some are described only as 'cash.' The judge notes that the sponsor only kept 'receipts until he knew the money had been received.' The sponsor could not recall the names of the agencies which he used or their addresses. On the basis of the exchange rate quoted by the sponsor, the sums he claimed to transfer were, by reference to his claimed income at the time, implausibly large. At [18-19] the judge analyses the evidence in even greater detail. In some years (e.g. 2009), there had been no transfers whilst the single transfer in 2005 was for a sum not consistent with the sponsor's evidence. The outcome of this detailed analysis, that the appellant had not proved dependency on the sponsor whilst the former had

been in Bangladesh, was patently available to the judge. At [15-19], the judge has, in my opinion, given cogent reasons for describing the evidence as 'generally unsatisfactory.'

5. I am also satisfied that the judge has not fallen into legal error by finding that the appellant and his mother had, whilst in Bangladesh, sources of income other than the sponsor. Mr Richardson submitted that the judge had lost sight of the correct test by observing more than once that the appellant and his mother had other sources of income. He submitted that it mattered not how many other income sources the appellant had if he could show that he depended on the sponsor for his essential needs. I disagree with that submission. The appellant's case may have been strengthened if, notwithstanding the 'generally unsatisfactory' nature of support by the sponsor, it had been clear that he had no source of funds other than the sponsor. An inference might then have been reasonably drawn that whatever support he had received from the sponsor was 'essential.' However, the judge's finding that the appellant had other income which might have met his essential needs, together with the poor quality of evidence of support from the sponsor, led entirely rationally to the Tribunal's conclusion that the relevant test had not been met.
6. I find, therefore, that the judge did not err in law by concluding that appellant had not proved to the required standard that he had been dependent on the sponsor for his essential needs prior to 2011. Consequently, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed

Date 13 September 2021

Upper Tribunal Judge Lane