



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/03135/2021

UI-2022-000710

THE IMMIGRATION ACTS

**Heard at Bradford
On the 24 June 2022**

**Decision & Reasons Promulgated
On the 18 July 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**Kamal Chowdhury
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Choudry

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 1 February 1992. He appealed to the First-tier Tribunal against a decision of a decision of the Entry Clearance Officer dated 6 February 2021 refusing him leave to enter the United Kingdom on a family permit to join his niece, an EEA national residing in the United Kingdom under European Community law.. The First-tier Tribunal, in a decision promulgated on 22 October 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At [13], the judge summarised the issues before her as follows:

The issues before me are whether the appellant is related to the sponsor as claimed and whether the appellant is dependent upon the sponsor to meet his essential living needs.

The judge made a number of detailed findings in her decision. However, the appellant argues that some of those findings are inadequately reasoned. At [18-19], the judge found:

The appellant in his witness statement stated at paragraph 9 that funds are sent to him by his niece through a money agency and once the funds are received by the bank, he collects them with a pin number. He stated that he does not have a bank account, any other income or savings. The sponsor gave evidence that she lost the remittance receipts before 2017 because she moved properties. She went on to state that she moved home from Loughborough to Newcastle only three weeks ago.

I find that if she had remittance receipts from 2014, these would have been submitted with the application. I do not find credible her evidence that she lost the remittance receipts either during her recent move or when she moved from Italy to the United Kingdom. In evidence her mother was unable to remember the name of a single money transfer agency that she claimed she used in Italy to send money to the appellant. She claimed that she had been sending him money from Italy from 2003 until she came to the United Kingdom.

3. The appellant argues that the judge's finding that she 'did not find credible' the claim that the appellant's niece had lost is not supported by any reasons. The appellant had provided an explanation which, presumably, the judge rejected but it is unclear why. It is possible that the judge rejected the explanation because she did not believe the niece would have forgotten the name of a money exchange agency which she claimed to have used for several years but, if that was reason, the judge needed to make this explicit. It is clear that the judge's observations at [18-19] played a part in her overall assessment that the evidence adduced by the appellant was unreliable but I find that I agree with Ms Choudry, who appeared at Upper Tribunal for the appellant initial hearing, that the appellant was entitled to know why his explanation (which is *prima facie* plausible) was rejected. Moreover, as Upper Tribunal Judge Lindsley observed when granting permission, the decision does not make it clear 'why [the lost receipts] were relevant to whether his niece now provides material support for the appellant's essential living needs.' Given that the findings at [18-19] go to the core of the judge's analysis of the credibility of the evidence as a whole, I find that the judge has fallen into material error.
4. There is force also in the remaining grounds. at [20], the judge found 'I do not find it credible that the appellant would pay the bills from the money sent to him by his niece, when the bills could easily be paid by Shahzaz Chowdhury and her husband rather than from their daughter's earnings'

when, once again, seemingly plausible explanation had been provided; the judge gives no clear reason for rejecting that explanation.

5. I do not suggest that the findings made by the judge were unavailable to her on the evidence. However, I do find that she has failed in every material instance to give the reasons for her findings to which the losing party, the appellant, was entitled. Ultimately, as Upper Tribunal Judge Lindsley noted when considering the permission application, 'the decision does not adequately explain why on the evidence before the First-tier Tribunal the appellant is not reliant on material support from his EEA sponsor, whom it is accepted has provided periodic remittances since 2017 at paragraph 28 of the decision, for his essential living needs.'
6. In the circumstances, I set aside the First-tier Tribunal's decision. None of the findings of fact shall stand. There will need to be a new fact-finding hearing which is better conducted by the First-tier Tribunal to which this is returned for the decision to be remade following a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Listing Directions: return to First-tier Tribunal; not Judge Beg; 1.5 hours; face to face; Taylor House; first available date; if the appellant requires an interpreter, he must notify the First-tier Tribunal forthwith.

Signed

Date 26 June 2022
Upper Tribunal Judge Lane