



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

Appeal Number: UI-2022-000122  
EA/06056/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 06 September 2022**

**Decision & Reasons Promulgated  
on 18 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN  
DEPUTY UPPER TRIBUNAL JUDGE HARIA**

**Between**

**MD ARIF AHMAD REMON**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the appellant: Mr S. Karim, instructed by Liberty Legal Solicitors LLP  
For the respondent: Ms A. Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the remade decision relating to the appeal of Md Arif Ahmad Remon (the appellant) who is a citizen of Bangladesh born on 1 January 1998.
2. The decision of First - tier Tribunal Judge S Meah (the judge) promulgated on 30 December 2021, dismissed the appeal of the appellant against the respondent's decision dated 15 November 2020 which refused to issue an EEA family permit to the appellant as the extended family member of an

EEA National. The appellant's sister is married to Mr Sabbir Rahman (the sponsor) who is an Italian citizen resident in the UK.

3. Upper Tribunal Judge Canavan (UTJ Canavan) found the decision of the judge contained an error of law and set it aside for the reasons given in her decision promulgated on 30 June 2022. A copy of the decision of UTJ Canavan is attached to this decision as an annex.
4. UTJ Canavan issued directions for the filing and service of any up to date evidence relied upon and for details of any witness(es) to be called at the resumed hearing including whether the witness(es) will require the assistance of an interpreter and if so, what language.
5. An interpreter had not been booked for the resumed hearing as the Tribunal had not been informed of the need for an interpreter. Mr Karim confirmed that although the sponsor had indicated a preference for an interpreter, he had checked that the sponsor is able to understand and communicate adequately in English and he indicated that he was content to proceed with the hearing in English without an interpreter. Ms Ahmed kindly agreed to adjust her questions to allow for the fact that the sponsor was communicating in English as opposed to his first language, Sylheti. There were no perceived difficulties with the sponsor's understanding and communication during the hearing and the panel was not made aware of any such difficulties.
6. The representatives agreed that the issue to be determined at this resumed hearing is whether the appellant is dependent on the sponsor for his essential living needs.

#### **Documentary evidence**

7. For the purposes of the hearing, the evidence was contained in the documentation filed on the CE File, containing 317 pages comprising the following documents:
  - a. Notice of hearing
  - b. Error of law Decision and Reasons
  - c. Respondent's Rule 24 Response
  - d. Appellant skeleton argument
  - e. First - tier Tribunal grant of permission
  - f. IAFT-4 Application and Grounds
  - g. First - tier Tribunal Decision and Reasons
  - h. Home Office Bundle

- i. IAFT 6
  - j. Appellant Bundle (AB)
8. In addition, the appellant relied on a Supplementary Appellant's Bundle (SB) comprising 156 pages which had been filed and served and but was not received by the panel until shortly after the commencement of the resumed hearing. Ms Ahmed had received the SB. The representatives agreed that they would direct the panel to the relevant documents in the SB.
9. Mr Karim stated that the appellant also relied on the respondent's published policy Free Movement Rights: extended family members of EEA nationals Version 7.0 dated 27 March 2019 (the respondent's policy) and he provided a copy to the panel.
10. The representatives confirmed the documents specified above were all the documents required for the hearing and to remake the decision.

### **Legal framework**

11. The Immigration (European Economic Area) Regulations 2016 (2016 Regulations) have been revoked by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 Schedule 1(1) paragraph 2(2) (December 31, 2020). Revocation, has effect subject to the savings provisions specified in The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, Regulation 2 and Schedule 1 and The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 Regulations ("The Transitional Provisions").
12. Schedule 3, paragraph 5 of the Transitional Provisions deals with existing appeal rights and appeals. As this appeal was extant prior to commencement day, and it is not argued by either party that the tribunal does not have jurisdiction to consider the appeal. Prior to revocation Regulation 8 of the 2016 Regulations (as far as relevant) read as follows:

#### Extended family member

8. - (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (1A), (2), (3), (4) or (5).
- (1A) ...
- (2) The condition in this paragraph is that the person is-
- (a) a relative of an EEA national; and
  - (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either-

- (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
- (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

**Sponsor's oral evidence**

13. The sponsor confirmed his name and address and adopted his witness statements dated 8 November 2021 and 1 September 2022 as his evidence in chief. In summary in his witness statements the sponsor states that his marriage to the appellant's sister Mrs Masuma Akter Rima was registered in Bangladesh on 16 August 2019 and that he is residing with his wife permanently in the United Kingdom (UK). He states that they all have EUSS status in the UK. The sponsor states that he sponsored his parents in law as his dependents and they have been granted an EUSS family permit and are in the UK as his dependents. He states the appellant was living with his parents as part of the same family unit and that he continues to live in the family home. He states that since his marriage he has been supporting his parents in law and after they came to the UK, he has been supporting the appellant by sending remittances. The sponsor states that the appellant lives in a home provided by his parents in a remote village situated about 50 miles from the nearest town. He states the appellant does not work and since his parent came to the UK, he lives on his own. The sponsor states that the appellant is one of only two siblings and he has no close family living in Bangladesh.
14. In response to questions by way of cross examination, the sponsor stated that he started sending money to the appellant after his marriage in 2019 and that he does not know who supported the appellant prior to 2019. The sponsor stated that the appellant does not pay rent as he is living in the home provided by his parents and the appellant has provided bills as evidence of his expenditure including electricity bills. The sponsor stated that there were no gas bills as the property is not connected to a gas pipeline and the appellant buys gas cylinders.
15. The sponsor also confirmed that he regularly transfers around £100.00 a month to the appellant. Miss Ahmed referred the sponsor to copies of various remittances contained in the SB and the sponsor was able to identify the corresponding payment shown on a copy of the appellant's bank statement. Ms Ahmed referred to the delay of a few days in the remittances appearing as credits in the appellant's bank account despite the MoneyGram remittances showing the date the funds would be available and stating in brackets " May be available sooner" and asked whether the sponsor was able to explain why there was a delay. The sponsor was unable to provide any explanation. The sponsor in response to questions about the sums credited explained that the sums differed slightly from the amounts transferred due to the exchange rate. During the

hearing the panel was able to check the exchange rate at the time of one of the remittances using OANDA which showed that the amount credited in Bangladeshi Taka was consistent with the amount transferred in GB pounds after applying the relevant rate of exchange. The sponsor also explained that the additional credit shown on the appellant's bank statement relates to credits given by the Bangladeshi Government for foreign exchange remittances. In response to re-examination the sponsor clarified that the sums credited by the Bangladeshi Government are equivalent around £2.00 or £2.10 for each remittance.

16. In response to questions from the panel, the sponsor confirmed that the appellant has only one sibling (the sponsor's wife). The sponsor confirmed that the appellant is approximately 23 years old. The sponsor stated that his parents in law came to live with him in the UK around the middle of June last year.

### **Respondent's submissions**

17. Miss Ahmed relied on the Entry Clearance Officer's refusal of 15 November 2020 and invited the panel to dismiss the appeal.
18. Ms Ahmed confirmed that it is accepted that:
  - a. the appellant receives regular monthly transfers from the sponsor averaging around £100,
  - b. the appellant lives in his parents home and so does not pay any rent, and
  - c. there is no requirement for the appellant to be dependent on the sponsor for all his essential needs provided the appellant is dependent on the sponsor for some of his essential needs.
19. Miss Ahmed accepted as reasonable the explanation given by the sponsor that the amounts shown credited into the appellant's bank account as "Eft" relate to the remittances made by the sponsor.
20. Whilst accepting that it was not her strongest point, Miss Ahmed sought to cast doubt on the reliability of the evidence relating to the remittances by drawing attention to the MoneyGram remittance receipts which stated the date the funds would be available and stated that they "May be available sooner" whereas the "Eft" credits shown on the appellant's bank statements showed the funds were received a few days later than the date shown on the remittance receipts.
21. Miss Ahmed stated that neither the appellant nor the sponsor have given any explanation as to how the appellant maintained himself prior to 2019 and suggested that there is a possibility that the appellant may be receiving funds from other sources.

### **Appellant's submissions**

22. Mr Karim invited that panel to allow the appeal. He pointed out that there was no challenge to the credibility of the Sponsor's oral and written evidence which provides details as to the background and circumstances of the appellant. Mr Karim referred the panel to the appellant's witness statement which states that he studied at a Madrasha school, he lives in a rural village and relies on the support from the sponsor to meet his essential needs. Mr Karim reminded the panel that to demonstrate dependency it is not necessary to show that all essential needs are met provided the support is required for essential needs.
23. He referred to the plethora of documentary evidence in support of dependency which includes money transfers via, MoneyGram (a company which he states is a reputable company), showing the financial support provided by the sponsor to the appellant as well as receipts, utility bills and other evidence of the appellant's expenditure. Mr Karim stated that although there is no specified evidence required to show dependency the respondent's policy, in particular page 19 gives examples of the type of evidence which show dependency and includes bank statements and money transfers. Mr Karim submitted that this appellant has produced the documents mentioned in the respondent's policy and much more in support of his claim.
24. As to the remittances being delayed by a day or two after the transfer, Mr Karim submitted this should not be of concern as it is accepted by the respondent that the sponsor sends around £100 each month and that the amounts sent and received tally. Mr Karim submitted that on a balance of probabilities and it must be more than a mere coincidence that the appellant receives amounts which equate to the amounts transferred identified as "Eft" on the bank statement.
25. In response to Ms Ahmed's suspicion that the appellant may have another source of income, Mr Karim submitted that there was no evidence of another source of income.
26. The sponsor married the appellant's sister in August 2019 and although there is no evidence of support prior to that date there is evidence of a prolonged period of support after that date.
27. At the end of the hearing, we reserved our decision. We set out our decisions and reasons below.

### **Decision and reasons**

28. The judge did not make an anonymity order and no application was made for such an order before the Upper Tribunal. We have considered the circumstances of this appeal and consider anonymity order is not necessary or appropriate.
29. We have considered all the evidence in the round on a balance of probabilities.

30. The credibility of the sponsor who had given evidence was not challenged. We find the sponsor gave credible evidence as to the circumstances of the appellant and the remittances. The respondent accepts that the sponsor has been sending regular monthly remittances to the appellant.
31. Ms Ahmed stated that she relied upon the ECO's refusal. The issue raised in the refusal relates to the issue of dependency and whether the appellant had discharged the burden to show that he was dependent upon the sponsor by reference to the evidence and in particular evidence of money remittances and bank statements of the appellant.
32. The respondent does not dispute the relationship between the appellant and the sponsor. The appellant has produced the sponsor's marriage certificate [AB:137], the appellant's sister's birth certificate [AB:126] and the appellant's birth certificate [AB:16] as well as a family certificate [AB:19]. Together, these documents prove the relationship.
33. The sole issue in dispute is dependency (Regulation 8(2), 2016 Regulations), and whether the appellant is genuinely dependent on the sponsor. There is no dispute as to the relevant legal principles and the law.
34. The binding decision of the Court of Justice of the European Union (CJEU) in SSHD v Rahman & Others [2012] EUECJ C-83/11 (05 September 2012); [2013] QB 249 made clear that the family member only needs to show that a situation of dependence exists in the country from which the family member comes from, at the very least at the time when they apply to join the Union Citizen on whom they are dependent.
35. Directive 2004/38/EC provides that Member States must facilitate the entry of extended family members in accordance with national law, including a family member who is dependent on the Union citizen. The CJEU confirmed in Rahman at [33], clarified that dependency is to be established as existing at the date of the application:

'33. It is clear that such ties may exist without the family member of the Union citizen having resided in the same State as that citizen or having been a dependant of that citizen shortly before or at the time when the latter settled in the host State. On the other hand, the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the Union citizen on whom he is dependent.'
36. The Court of Appeal in Latayan v Secretary of State for the Home Department [2020] EWCA Civ 191 stated that dependency is a question of fact and cited the relevant case law at paragraph 23 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.”

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. ...”

37. In Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383 Lord Justice Elias stated, at[32]:

“In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant.

38. The relevant case law indicates that the support that the EEA sponsor provides only needs to be ‘material’ or ‘necessary’ to enable the appellants to meet their essential needs (see Lim, at [25] & [32]; see also the respondent’s Policy Guidance ‘Extended family members of EEA Nationals, version 7.0, published for Home Office staff on 27 March 2019, which states, “The applicant does not need to be dependent on the EEA national to meet all or most of their essential needs. For example, an applicant is considered dependent if they receive a pension which covers half of their essential needs and money from their EEA national sponsor which covers the other half.”).

39. It is clear that the question of dependency must involve a holistic evaluation of a number of factors and must not be a bare calculation of financial dependency.



40. When applying the test to the circumstances of this appeal we are satisfied that the appellant is dependent on the sponsor for his essential needs. When looking at his circumstances, the appellant is a young man aged 23, living in a rural village about 50 miles away from Sylhet. The appellant was educated in a Madrasha until 2017 where he learned Arabic and Sharia law, there are certificates in support [AB:120-125]. He studied until he was 19 years of age. We accept the appellant's and sponsor's evidence that the appellant lived with his parents until they departed Bangladesh to join their daughter and son in law (the sponsor) in the UK and after their departure the appellant has continued to live in the family home alone. There is a letter from the Chairman of No8 Moglabazar Union Parishad dated 21 October 2021 [AB:20], which has been stamped by a Notary Public, stating that he knows the appellant personally and he is unemployed and residing alone.
41. We are satisfied that the circumstances of the appellant's parents are such that they do not have any source of income other than that provided by the sponsor upon whom they are dependent. This was recognised by the issue of entry clearance to them as they were dependent on the sponsor.
42. The amounts credited into the appellant's account and identified on the bank statement as "Eft" are consistent with the amounts transferred by the sponsor as shown on the MoneyGram remittance receipts which shows the amount transferred in GBP and the amount received in BDT. The sums are also shown on the sponsor's bank statements [AB:201-222]. We do not consider the delay of a few days between the date of transfer and the date of credit to be of concern despite the note on the remittance receipts that funds may be available sooner and on a balance of probabilities, we are satisfied that the sums shown as "Eft" are the funds transferred by the sponsor. We accept as plausible the sponsor's explanation as to the small additional credits in the appellant's account which are shown immediately after a "Eft" credit as being credits from the Government of Bangladesh for foreign remittances.
43. There are three unexplained credits shown on the appellant's bank statement. A "Ho/treasury" credit on 10 August 2020 of 21,665.70, and a second credit on 2 September 2020 of 13,123.23 and a third credit shown as "2% incentive" of 696.77 on 26 November 2020 [SB:85-86]. Since the respondent did not raise any issue with these sums and Ms Ahmed did not question the sponsor about these credits, accordingly we do not draw any adverse inference from them. Other than these three unexplained credits, the bank statements which cover the period from August 2020 to August 2022 do not show that the appellant receives any income from any other source. The bank statements also do not show any savings. We are satisfied that the appellant is therefore reliant only on the financial remittances provided by the sponsor. This is consistent with the written and oral evidence of the sponsor which is not challenged and the appellant's witness statement.

44. The appellant has produced numerous receipts [AB:173-197] showing his expenditure which includes items of food, gas cylinder purchases and electricity bills [AB:167-172].
45. The appellant has produced numerous screenshots of his contact with his sister Rima and his parents the oldest of which is dated 10 June 2020 [AB:59-119] which demonstrates emotional ties.
46. It is accepted that the sponsor is a qualified person who is genuinely exercising Treaty Rights in the United Kingdom. The sponsor and his wife have pre-settled status in the UK, this is supported by documentary evidence [AB:128-147].
47. In all the circumstances and when considering the evidence as a whole we are satisfied that the appellant has established on the balance of probabilities that he is dependent upon the EEA sponsor. This is because he is presently in receipt of financial support from the sponsor for his basic and essential needs.

## **DECISION**

The appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

Signed N Haria  
Deputy Upper Tribunal Judge Haria

Date: 13 September 2022

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### **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**



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

Appeal Number: UI-2022-000122  
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**THE IMMIGRATION ACTS**

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**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**MD ARIF REMON**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the appellant: Mr S. Karim, instructed by Liberty Legal Solicitors

For the respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 15 November 2020 to refuse to issue an EEA family permit as the extended family member of an EEA national. The appellant is married to the sister (brother-in-law) of an Italian citizen who is said to be resident in the UK.
2. First-tier Tribunal Judge S. Meah ('the judge') dismissed the appeal in a decision promulgated on 30 December 2021. The judge summarised the respondent's reasons for refusing the application [2]-[4]. He summarised what he considered to be the relevant legal framework [7]-[14].

3. The judge began his findings by considering 'prior dependency before the EEA national came to live in the UK' and referred to the decisions in *Dauhoo (EEA Regulations - reg 8(2))* [2012] UKUT 79 (IAC) and *Moneke (EEA - OFMs) Nigeria* [2011] UKUT 00341 (IAC). The judge made the following findings:
  - '23. The sponsor stated he acquired Italian citizenship in either January or February 2017, and he then came to live in the UK as an EEA national in May 2017. He did not marry his wife until some 2 years and 3 months after he came to live in the UK in August 2019, and it was at this point that he began to support the appellant (alongside his mother-in-law and father-in-law) in Bangladesh by sending monies to there.
  24. The sponsor accepted that he did not know the appellant until he married his wife in 2019. It therefore follows that the appellant was not financially dependent upon the sponsor prior to the sponsor coming to the UK, whilst he was living in Italy, during the 3 months after he acquired Italian nationality in either January or February 2017.
  25. Therefore, even if I were to accept the claim of financial dependency in the UK since August 2019, that is still insufficient to bring the appellant within one of the scenarios envisaged in ***Dauhoo***, bearing in mind he is claiming financial dependency and he was not claiming to ever have been a part of the sponsor's household anywhere. It therefore follows that the appellant's appeal must be dismissed on this count alone.'
4. Although he considered the issue academic because of his first finding, the judge went on to determine whether the appellant was financial dependent on the EEA sponsor to meet his 'essential living needs'. He directed himself to the decision in *Lim v ECO (Manila)* [2015] EWCA Civ 1383 and went on to make the following findings:
  - '28. I found the sponsor's evidence in relation to the financial support he has been providing from the UK to the appellant in Bangladesh since August 2019 to be plausible, and there were no reasons for me to doubt any of that which he stated, and I accordingly accept that the sponsor has been responsible financially for the appellant for the duration he claims whereby he has been providing for all the appellant's essential needs during this time, and the evidence is suggestive of this.
  29. This is, however, insufficient to avail the appellant of course given that there was no prior dependency upon the sponsor before he came to reside in the UK, and after he acquired Italian citizenship in either January or February 2017.'
5. The appellant applied for permission to appeal to the Upper Tribunal. The grounds make a series of submissions but are not clearly particularised with reference to the relevant case law. The grounds argued that the judge accepted that the appellant was dependent on the EEA sponsor for his essential needs. The judge set out an incorrect version of regulation 8 (I note that in fact the version contained in the decision was the wording

from The Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations 2006')). The grounds went on to argue that the correct wording of the relevant regulation at the time of the hearing, and the wording of the Citizens' Directive (2004/38), meant that the appellant did not need to show prior dependency on the sponsor before he arrived in the UK only prior dependency before the appellant arrives in the UK.

6. The respondent's response under rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 accepted that the judge quoted the wrong version of regulation 8 and applied the wrong test relating to prior dependency. However, she argued that the judge's alternative finding relating to dependency was 'wholly unreasoned'. The judge referred to the case of *Lim* but failed to give any adequate reasons to explain why he considered that the money transfers were used to meet the appellant's essential needs. The respondent referred to the decisions in *Binaku (s.11 TCEA; s.117C NIAA; para 399D)* [2021] UKUT 34 (IAC) and *Devani v SSHD* [2020] EWCA Civ 612; [2020] 1 WLR 2613. Whilst recognising that it was not possible for the respondent to appeal specific findings in the decision the lack of reasoning in the remaining aspect of the decision meant that it was appropriate for the decision to be set aside. The appeal should be remitted to the First-tier Tribunal for a fresh decision.

### **Decision and reasons**

7. Ms Isherwood accepted that the decision disclosed an error of law in so far as the judge, in substance, applied the test in *Bigia* i.e. that the extended family member needed to show that they were dependent on the sponsor in the country from which the sponsor had most recently come from prior to exercising rights of free movement in the UK.
8. The principle outlined in *Bigia*, and subsequently applied in cases such as *Dauhoo (EEA Regulations - reg 8(2))* [2012] UKUT 79 (IAC) and *Moneke (EEA - OFMs) Nigeria* [2011] UKUT 00341 (IAC), which were the cases relied on by the First-tier Tribunal judge, has long since been overtaken by the binding decision of the Court of Justice of the European Union (CJEU) in *SSHD v Rahman & Others* [2012] EUECJ C-83/11 (05 September 2012); [2013] QB 249. The CJEU made clear that the family member only needs to show that a situation of dependence exists in the country from which the other family member comes from, at the very least at the time when they apply to join the Union Citizen on whom they are dependent.
9. To the extent that the judge applied the principle first outlined in *Bigia*, that approach amounts to an error of law. The judge's understanding of the relevant legal framework was 10 years out of date.
10. For the purpose of this appeal, the question is whether that error made any material difference to the outcome in circumstances where the judge nevertheless went on to consider the correct test relating to prior dependency i.e. whether there was evidence to show that the appellant was dependent on the EEA sponsor for his essential needs.

11. The judge made a negative finding in relation to an erroneous legal test, which formed the central reason for dismissing the appeal [29]. In this respect the error was material to the outcome.
12. Mr Karim submitted that the judge's findings relating to dependency, applying the correct test, were sustainable and should be sufficient for the Upper Tribunal to remake and to allow the appeal. He made a series of submissions with reference to the evidence to support his argument that the judge's finding relating to dependency was sustainable. In the rule 24 response the respondent argued that the judge's alternative findings made at [28] were insufficiently reasoned and submitted that the appeal should be remitted to the First-tier Tribunal for a fresh hearing.
13. Having already found that the error of law was central to the outcome of the appeal the decision must be set aside because the appeal was dismissed on that basis. The question of whether the judge's alternative findings relating to dependency at [28] were adequate forms part of the Upper Tribunal's assessment of how to proceed with the appeal once an error of law has been found. This is considered with reference to section 12(2)(b) of The Tribunals, Courts and Enforcement Act 2007 ('TCEA 2007').
14. Despite Mr Karim's valiant efforts on behalf of his client I cannot agree that the judge's findings at [28] were adequate for the Upper Tribunal to remake the decision without hearing further evidence. The central plank of the decision was the judge's erroneous finding relating to the absence of dependency while the EEA sponsor was living in Italy [24]. When the judge turned to consider whether there was evidence of dependency to meet the appellant's essential living needs in Bangladesh, he made clear that he considered that the issue was academic because of his earlier finding. This might explain why the findings at [28] were not as detailed as they might have been if the judge had thought that the issue was likely to be determinative of the appeal.
15. Mr Karim took me through the decision and submitted that the judge had the opportunity to hear evidence from the sponsor. It was clear that he had considered the reasons for refusal, the grounds of appeal, and the documentary evidence. At [23] the judge noted the sponsor's evidence that he married his wife in 2019 (the appellant's sister). The judge was cognisant of the fact that the application was refused on the basis that there was insufficient evidence to show that the appellant was dependent on the EEA sponsor for his essential living needs. The bundle contained evidence to show that the appellant's parents had already been granted entry clearance under the EU settlement scheme (not under EU law) as dependents of the EEA sponsor. Mr Karim also referred me to various pieces of evidence in the appellant's bundle including remittance receipts, bank statements, utility bills and receipts.
16. Mr Karim's submissions outlined the evidence that might support the overall finding made by the judge. His submissions outlined reasons that could have been given by the judge for his finding, but were not. The

judge made a general statement that the sponsor's evidence of financial support was 'plausible' but did not give reasons to explain why he came to that conclusion. The judge made a general statement that the sponsor had been providing for the appellant's essential needs. He stated that 'the evidence is suggestive of this' but did not explain what evidence he had considered or why it appeared to support the contention. There are no findings as to the credibility of the sponsor's oral evidence. The judge failed to explain why the evidence supported his conclusion.

17. For these reasons I find that the finding at [28] is insufficient for me to go on to remake the decision without further evidence or submissions. The decision will need to be remade at a resumed hearing. The usual course of action is to remake the decision in the Upper Tribunal even if further findings of fact might need to be made on the evidence. Although the respondent suggested that the appeal is suitable to be remitted to the First-tier Tribunal no reasons were given as to why this would be necessary. It is open to the Upper Tribunal to hear evidence from any witnesses that the appellant might want to call and to make findings on the evidence.

#### DIRECTIONS

18. **The appellant** shall notify the Upper Tribunal within 14 days of the date this decision is sent whether any witnesses will be called at the resumed hearing. If so, the appellant's representatives shall also inform the Upper Tribunal of the following information:
- (i) The name of any witness that he intends to call;
  - (ii) Whether the witness will require the assistance of an interpreter;
  - (iii) If so, what language; and
  - (iv) Whether the witness has any vulnerabilities that might require special measures.
48. **The parties** shall file and serve any up-to-date evidence relied upon at least 14 days before the resumed hearing.

#### DECISION

The First-tier Tribunal decision involved the making of an error of law

The decision will be remade at a resumed hearing in the Upper Tribunal

Signed M. Canavan  
Upper Tribunal Judge Canavan

Date 13 June 2022