



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001496
EA/02531/2021**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 10 November 2022**

**Decision & Reasons Promulgated
On the 23 January 2023**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

LAMYA AKTER
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ali instructed by ASM Immigration Services.
For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision promulgated following a hearing at Birmingham CJC on 8 September 2022 the Upper Tribunal set aside the decision of the First-tier Tribunal in this matter, which allowed the appeal, and directed that the appeal be listed before the same panel for the purposes of substituting a decision to either allow or dismiss the appeal.

- 2.** The appellant, a citizen of Bangladesh born on 30 October 2006, made an application for an EEA Family Permit as a dependent family member of an EEA national, Mr Ahmed, exercising treaty rights in the UK, who is claimed to be the appellant's brother in law. Those facts are not contested.
- 3.** The decision was considered by an Entry Clearance Officer (ECO) who on 13 January 2021 refused the application. It was noted in that decision that the appellant claimed to be financially reliant upon her sponsor to meet her essential living needs and that she received £100 per month from her sponsor. The ECO took into account 27 money transfer remittances between 10 December 2018 and 9 January 2020 in the name of the appellant's father and from 2 October 2020 until 4 January 2021 in the name of the appellant and another. The ECO was not satisfied that the fact funds had been transferred was sufficient proof of essential needs being met and noted significant gaps in the receipts by the appellant's parents. It is also said in the notice that Ms Akhtar was not the sole beneficiary of the funds transferred and had provided no evidence to demonstrate the money in the transfers was used for her benefit. It was not accepted there was reliable evidence to demonstrate dependency on the EEA national sponsor.
- 4.** The appellant's parents had themselves applied for leave to enter the United Kingdom under the terms of the EU Settlement Scheme (EUSS) and were granted EUSS Family Permits accordingly.
- 5.** It was submitted by Mr Ali that the fact it had been accepted, on the basis it was assumed dependency existed with such applicants (the appellants parents), that that assumption should equally apply to the appellant.
- 6.** It is correct under Appendix 1 of Appendix EU dependency is assumed under the "dependent parent" section. Mr Williams was asked for his view on the submission by Mr Ali that such assumption could equally apply to the appellant as she lived with her parents in Bangladesh before they came to the UK, but he did not accept such a proposition. Specific reference was made to the definition of a "dependent parent" in Appendix EU which defines the term as being applicable to "(a) the direct relative in the ascending line of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner". We accept the submission the definition relates to a specifically defined group. There is no authority of which we are made aware that an assumption that may apply to one specifically defined group should somehow be applied to a person who would otherwise not fit within that group.
- 7.** We have considered the supplementary bundle provided by the appellant/sponsor in relation to this appeal which includes a schedule of the remittances that have been sent to Bangladesh.
- 8.** As noted in the original decision the fact such payments have been made is not disputed before us. The question is and always has been whether those payments are necessary to meet the appellant's essential needs.
- 9.** It was not disputed before us that the appellant has continued to live in Bangladesh with a paternal uncle, in his household with his family,

after her parents left for the UK. The uncle is not an EEA national and that is therefore not a provision of an essential service provided by the relevant EEA national.

- 10.** We have within the original bundle provided to the First-tier Tribunal seen an affidavit prepared by the uncle in which he confirmed the appellant has lived with him since March 2020 but stating she is totally dependent upon her sponsor in the UK as her expenses are covered by her brother-in-law (the sponsor) who sent money to her bank account every month. The uncle claims to have family of his own, not to be able to financially support the appellant, and that as she is a minor it is hard for her to stay away from her family anymore.
- 11.** In relation to the latter point, it is noted in the initial refusal this is a case in which the appellant's parents chose to come to the UK being aware that one consequence was that the appellant, whose application was refused, was left behind in Bangladesh. No human rights application was made and the statement by the ECO that there was nothing on the evidence to show the appellant's parents could not return to Bangladesh to live with the appellant if it was felt necessary for them to do so, has not been shown to be an irrational or unreasonable conclusion. That is still the position on the evidence.
- 12.** We have also seen receipts for items purchased at local shops in Bangladesh, but they do not, per se, establish the payments were made by the sponsor to meet the appellant's essential needs as they appear to be for items that would have been purchased for meeting the needs of the uncle's family as a whole.
- 13.** A fundamental flaw in the affidavit of the uncle is the statement the sponsor has been sending payments to the appellant's account each month, which is factually incorrect. We accept Mr Ali's submission that regular payments on a monthly basis are not required to prove dependency, as that is not the required test, but the schedule provided does not support the uncle's contention.
- 14.** The schedule of payments provided at [9] of the sponsor supplementary statement shows payments being made in January, April, June, August, September and December 2017, February, May, July, September, December 2018, January, February, March, April, May, June, July, August, September, October, November and December 2019, January, October, November (twice), December (twice) 2020, January, February, March, April, May, June, July, August, September, October, November 2021 and, January, March, April, May, June, July, August (twice), September and October 2022.
- 15.** We do not accept the sponsor's explanation for the times when payments were not recorded as having been made as being attributable only to the Covid-19 pandemic. Having considered the chronology of the pandemic including the various times when the UK was in lockdown, it does not explain all the missing payments which cover periods when society had opened up again, restaurants and shops reopened, and people were going on holiday, as submitted by Mr Williams.
- 16.** A claim was made that part of the payments that were being made were to meet the appellant's educational needs, but it was not made

out that the appellant is not entitled to free compulsory education within the Bangladeshi education system or requires such payments on the facts to be educated. The appellant is currently 14 years of age and within the secondary education system. It was not made out that without the support of the sponsor the appellant could not continue to be educated.

- 17.** An issue that has been raised at every stage in these proceedings relates to the period when payments were not being made. The gap in the payments appears to coincide with the appellant's parents' arrival in the UK. We find merit in the submission by Mr Williams that during the period that remittances were not being sent to Bangladesh there must have been sufficient resources within the uncle's family unit and home to meet the appellant's essential needs.
- 18.** We find this submission made out as there was no evidence before us, despite there having been ample opportunity for the same to be produced, to demonstrate that during the time remittances were not being sent from the UK there was any adverse impact upon the appellant by way of an inability to meet her essential needs. As the evidence indicates that notwithstanding remittances not being sent there is no evidence of any impact upon the appellant or evidence that her essential needs were not being met, there must be another source of income available to the appellant to meet all such needs, which must be the resources available to the uncle.
- 19.** Although the schedule shows remittances have recommenced, it was not established that the essential needs have increased or that they could not continue to be met from the resource that clearly met them during the time the remittances ceased. There is no evidence of a deterioration in resources available that met the appellant's essential needs during the substantial gap in remittances. We accept that remittances have been sent but if for betterment or improvement in lifestyle rather than to meet essential needs that does not meet the required test.
- 20.** We find merit in the argument that it has not been made out that the money sent by the EEA national was required to meet the essential needs of the appellant as we do not find it made out that she does not have access to another source of income in Bangladesh to meet those needs.
- 21.** Having considered the merits of the appeal carefully we conclude that the appellant has failed to discharge the burden of proof upon her, to the required standard, to show she is entitled to the residence card she seeks.

Decision

- 22. We dismiss the appeal.**

Anonymity.

- 23.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make no such order pursuant to rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson
Dated 11 November 2022