



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-001467**

UI-2022-001468

**First-tier Tribunal No:**

**EA/03015/2020**

EA/03017/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Balqees Begum  
Manzoor Hussein  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr R Ahmed of Counsel, instructed by Fawad Law Associates

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Heard by remote video at Field House on 18 May 2023**

**DECISION AND REASONS**

1. The appellant, a national of Pakistan has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Mack) promulgated 22.1.22 dismissing her linked appeal (with her husband MH, appeal reference EA/03017/2020) against the respondent's decision of 27.2.20 to refuse their applications for an EEA Family Permit on the basis of being extended family members of MK, the brother of the first appellant, a Dutch national exercising Treaty rights in the UK.
2. In granting permission, Upper Tribunal Judge Reeds considered it arguable that the First-tier Tribunal Judge "failed to properly address the issue of dependency by considering the documentary evidence provided by the sponsor and that in essence the (Judge) arguably rejected the appeal based on the credibility of the

*sponsor and what the (Judge) considered was inconsistent evidence without taking into account the sponsor's hearing impairment and the effect that disability may have had on the evidence that he gave."*

3. Despite some difficulties in communicating with Mr Ahmed over Teams, with the additional use of a mobile phone both representatives and myself were able to be heard and understood. I am grateful for the succinct submissions made and before the hearing concluded I ensured that both representatives were satisfied that they had said all that they wished to in submissions and reply to submissions. Given the communication challenges, I reserved my decision and reasons to be made in writing, which I now give.
4. Having carefully considered the impugned decision in the light of the submissions made to me and the written grounds, I do not accept that there was an error of law in the judge's approach to the sponsor's evidence or any procedural unfairness in the way in which evidence was taken or considered. Although the issue of his hearing was raised in earlier CMR proceedings, there was no specific application at the appeal for the sponsor to be treated as a vulnerable witness or for some other arrangements to be made to be able to take his evidence. It was the judge's estimation that the sponsor was hard of hearing, but his legal representative, Mr Timson, confirmed that he had been able to take full instructions from the sponsor prior to the hearing. Significantly, there was no application for an adjournment; Mr Timson's instructions were to proceed.
5. It is clear from the decision that all efforts were made to accommodate the sponsor, as set out at [4] and [5] of the decision, set out as a preliminary issue. As a result of the judge's intervention, the interpreter sat close to the sponsor, on his right side, the sponsor having stated that he could not hear from his left ear. The judge also gave instructions to speak loudly. No submissions have been made to me as to what other arrangements could have been made. However, Mr Ahmed's secondary submission on this first ground was that the judge failed to take into account the sponsor's hearing difficulty when assessing the evidence.
6. Contrary to the grounds and the submissions, it is clear from the decision that the difficulties with the sponsor's evidence were fully taken into account. However, the difficulties bore only on the taking of that evidence and not its reliability or the weight to be accorded to it. The inconsistencies in the evidence are not in any way explicable by the sponsor being hard of hearing. Unarguably, despite the challenges, evidence was taken, and the sponsor did understand and responded as he saw fit to questions asked in oral evidence. The grounds do not even begin to demonstrate that any different or better evidence would have been given or that any different conclusion would have been reached on the sponsor's evidence by taking account of his being hard of hearing. The evidence was problematic for the appellant's case because of its content, not the manner of its being taken or given, or assessed. I am satisfied that no error of law is disclosed by this ground.
7. In relation to the issue of dependency, Mr Ahmed's final submission effectively relied on the grounds which assert that the judge required the appellants to satisfy additional requirements, contrary to EU law, failed to apply relevant legal criteria, and took into account irrelevant matters. It is also submitted at [20] of the grounds that the judge imposed too high a test and failed to make clear findings supported by cogent reasons as to whether the appellants were dependent on the sponsor. These grounds and the sweeping assertions are vague and poorly particularised.

8. Unarguably, the judge considered the documentary evidence, which is referenced in the decision including at [52] where the judge set out a number of difficulties with the documentary evidence. The judge was entitled to take account of the fact that the oral evidence as to the sponsor's finances was inconsistent with the submitted documentary evidence. Whilst the grounds suggest that the oral evidence could not be regarded as unreliable when compared with the documentary evidence, it was open to the judge to accord weight to the oral evidence and reach a conclusion that it was unreliable. The judge was not bound to accept what was stated in the documentary evidence to the exclusion of what the sponsor stated in his oral evidence. Unarguably, the inconsistencies disclosed through the oral evidence undermined the credibility of the appellant's claim to be dependent on the sponsor. Unarguably, cogent reasons are provided for findings in relation to the sponsor's evidence, including at [56] of the decision, where the judge found the sponsor "*consistently vague, contradictory and lacking in detail. I found that this was deliberate and this can do no other than undermine the entirety of the case of the appellants.*" As the judge made clear, if she could not rely on the sponsor to give a clear and truthful account, it undermined the appellants' claim to be dependent on him.
9. Unarguably, the judge made a correct self-direction on the law as to dependency, as set out at [57] of the decision onwards. Unarguably, the judge was entitled to reach the conclusion that there had been a concerted effort not to properly evidence the appellants' true financial circumstances. Cogent reasoning was provided, and the findings were open on the unsatisfactory evidence. The claim that the judge has imposed a higher test or required evidence not required by the Regulations is not made out.
10. In the circumstances, and for the reasons set out above, I am satisfied that no material error of law in the making of the decision of the First-tier Tribunal is disclosed.

### **Notice of Decision**

The appeal of each appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed for the reasons therein stated.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18 May 2023**