



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

**Case No: UI-2021-000818**  
**First-tier Tribunal No:**  
**EA/04510/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**SURINDER KAUR**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**(NO ANONYMITY ORDER MADE)**

**Representation:**

For the Appellant: Mr A. Gondal of Berkshire Law Chamber  
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 19 April 2023**

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 07 September 2020 to refuse to issue an EEA Family Permit under The Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016') recognising a right of entry and residence as the family member of an EEA national. The appeal was brought under the EEA Regulations 2016.
2. First-tier Tribunal Judge R. Hussain dismissed the appeal in a decision sent on 20 August 2021. In a subsequent decision, the Upper Tribunal

decided that the First-tier Tribunal decision involved the making of an error on a point of law and set it aside in a decision sent on 01 March 2023 (annexed). The appellant was directed to file any further evidence and schedule relating to remittances at least 14 days before the resumed hearing.

3. The appellant failed to comply with the directions, sending a bundle only a couple of days before the hearing, and failing to prepare a schedule. Time had to be spent at the beginning of the hearing to ensure that the Upper Tribunal and the Presenting Officer had all the documents required to proceed.
4. The appellant's son, Mr Harjinder Singh, who is the EEA sponsor, attended the hearing to give evidence. It was said that the appellant's husband, Mr Balwinder Singh, who was issued with a residence card as a dependent direct relative of the EEA sponsor, was currently in India with his wife. I was satisfied that Mr Singh understood the interpreter. He adopted his witness statement dated 16 April 2023 and was asked a series of questions by Mr Melvin. It is not necessary to set out the evidence because it is a matter of record, but I will refer to any relevant aspects of his evidence when I make my findings. Similarly, it is not necessary to rehearse the submissions made by the legal representatives.

### **Decision and reasons**

5. It is not disputed that the appellant is a direct relative in the ascending line of an EEA national or that Mr Singh was a qualified person who was exercising rights of free movement in the UK. The only issue that remains to be determined in this appeal is whether the appellant is a 'dependent' family member within the meaning of EU law.
6. A holistic factual assessment of the appellant's circumstances is required. It is not necessary to consider the reason why a family member is dependent on the EEA national save in cases involving abuse of rights. Nor is it necessary to consider whether they could support themselves by other means. The burden of proof is on the appellant to show on the balance of probabilities that she is in a situation of real dependence and that it is necessary to rely on material support from the EEA sponsor to meet her basic needs: *Jia v Migrationsverket* [2007] INLR 336, *Reyes (EEA Regs: dependency)* [2013] UKUT 0031, *Flora May Reyes v Migrationsverket* EU:C:2014:16 (16 January 2014), and *Lim v ECO (Manila)* [2016] Imm AR 421.
7. In the decision letter dated 07 September 2020 the respondent acknowledged the appellant's claim to be dependent upon her son in the UK. It was noted that she had produced evidence to show that her son sent money transfers between 19 January 2019 to 03 August 2020, but there was no evidence of receipt. The ECO also called into question whether, on the evidence relating to the sponsor's income, he could afford financial support for her essential needs. The evidence indicated that his income was around £1,600 a month and he paid £1,200 in rent. The ECO

was not satisfied that there was sufficient evidence relating to her family's circumstances to show that she required the material support of the sponsor to meet her basic needs.

8. The appellant has been on notice since 07 September 2020 of the need for more detailed information about her family circumstances. Since the First-tier Tribunal decision, those representing her will have been aware of the concerns expressed by the judge about the deposits into her joint bank account held with her husband. The judge expressed concerns about the possibility of the appellant in fact being supported by her husband. For the reasons given in the error of law decision, I found that these matters should have been put to the sponsor or her legal representatives at the hearing before the First-tier Tribunal.
9. It became apparent during this hearing that the inference that I made about the appellant's husband joining his son in the UK after being issued with a residence card as a dependent family member might have been misplaced considering information now provided [7][16][17]. In his most recent statement, the EEA sponsor says that his father has resided in the UK since 29 April 2002. However, when he was asked about his father's immigration history the sponsor was vague and evasive. When asked what his father did during what might have been an extremely lengthy period of residence in the UK, the sponsor merely stated that his father did not work and was reliant on support from the Gurdwara. The sponsor's oral evidence was that he and his sister remained at home with their mother when his father first came to the UK. When asked how they were supported, he gave an implausible answer. He claimed that he had been responsible for supporting the family through farm work between 2002 and 2008, when he left India, even though he was only 11 years old when his father came to the UK.
10. It is notable that despite the observations made by the First-tier Tribunal judge there is no evidence from the appellant nor her husband. Mr Balwinder Singh was said to be unavailable to give evidence because he was in India. The bank statement showing large deposits of money from other sources in the period 12 June 2019 to 10 July 2020 was a cause for concern for the First-tier Tribunal judge. I am prepared to accept that this is an account in the joint name of the appellant and her husband although there is nothing on the face of the document to say so. The account shows a single direct payment from the sponsor for 105,925 rupees on 09 October 2019 (OANDA = £1,218). The preceding deposit of 400,000 rupees made on 07 September 2019 (OANDA = £4,530) the sponsor says was a deposit by his sister. This was not explained in his witness statement. At the hearing, the sponsor asserted that he had lent his sister this money and when she offered to pay it back, he asked her to pay it directly into their parents' account in India. The sponsor's evidence at the hearing was vague and lacked any surrounding detail about why he had lent his sister money.
11. The up-to-date bundle included a letter that purported to come from the Punjab National Bank. The letter is unsigned and undated although it

appears to have some form of stamp. The letter states that the account 'stands closed' but says nothing more. It does not say when the account was closed or why. When the sponsor was asked about this at the hearing his answer was vague, and in my assessment, implausible. He claimed that when he went to the bank on a recent visit to India to try to get an up-to-date account statement the bank told him that the account had been closed because there had been no deposits. It is not plausible that a bank would close a bank account without notice to the account holders simply because there had been no deposits. Only the account holders could close the account. There is nothing from the appellant or her husband to explain why they might have closed the account. I am left with some doubt about the credibility of the sponsor's explanation.

12. The evidence shows that the sponsor has continued to send financial remittances to his mother in India. The schedule that was belatedly prepared at my insistence on the morning of the hearing shows that the sponsor sent periodic cash remittances since July 2020. During the latter half of 2020 he sent six payments totalling just over £800. The schedule indicates that in 2021 he sent nine payments totalling around £1,680. In 2022 the sponsor sent eight payments totalling around £2,554. In the first few months of this year the sponsor sent three payments totalling around £493.
13. The evidence includes as schedule prepared by the sponsor of the appellant's estimated monthly expenses including rent, utilities, medical treatment, groceries, clothes, mobile phone, and miscellaneous expenses. He estimated these to come to around 12,500 rupees a month (OANDA = £123 at the date of hearing). The schedule is largely unsupported by evidence save for a copy of what is said to be some form of tenancy agreement that was notarised on 15 June 2021 stating that the appellant pays 2,500 rupees a month for one bedroom accommodation (OANDA = £24). It is unclear when the appellant might have moved into that property or whether she was living before. Even taking into account the fact that there might be a lower cost for goods and services in India compared to the UK this seems like an extremely low estimate if it is also said to include the appellant's rent, utility bills and medical costs.
14. Having considered all the evidence in the round I am satisfied on the balance of probabilities that the sponsor does send regular financial remittances by way of money transfer to his mother in India. However, the evidence also shows that other members of the family, including his sister, have sent large amounts to the appellant in the past. I found the sponsor's evidence about the circumstances relating to other family members such as his father and his sister to be vague and somewhat evasive. He did not give his evidence in an open way. Having heard from the sponsor I was left with the impression that he was avoiding giving more detailed information about the overall family circumstances, and in particular, information about his father's position.
15. Given some of the observations I made in the error of law decision, I have considered the fact that the appellant's father was issued with a residence

card as a dependent family member on 03 December 2019. A dependent family member is granted permission to work when they come to the UK. I accept that there is no evidence to show that the appellant's husband is working in the UK. I do not go so far as the First-tier Tribunal judge to suggest that he is, but for the reasons given above, I find that there are still significant question marks about the appellant's husband's position and how much support he might provide to his wife.

16. The appellant has been on notice since the application was refused that the respondent was not satisfied that there was sufficient information relating to her personal and familial circumstances to be able to conclude that she is dependent upon material support from the sponsor to meet her basic needs. Although the sponsor has produced evidence to show that he has been sending remittances to India in the last few years, the total amount remitted each year amounts to no more than £1,500-2,500 a year. The suggestion is that the appellant is wholly dependent on the sponsor.
17. However, for the reasons given above, I found the sponsor to be unforthcoming when he gave evidence. The overall impression that I formed was that he was seeking to avoid giving any detail about his father's immigration history, what support his father provided to the family in the past, and what resources his father might still provide. The explanation about the closure of the bank account lacked credibility. It is at least possible that this explanation was proffered to avoid producing an up-to-date statement that might illuminate the appellant's financial position.
18. The sponsor explained that his sister now lives in Portugal. There is evidence to show that she made at least one large deposit into their parents' joint account in the past. Little information has been provided about her circumstances to assess whether she might also send cash remittances to support their mother that would not show up in a bank account. The sponsor's explanation about having lent his sister money was not inherently implausible but was vague and lacked detail.
19. Although the appellant has produced evidence to show that her son sends average amounts of £1,500-2,500 a year, I find that the evidence relating to the wider family situation is lacking, and in some respects, might have been deliberately obscured. For the reasons given above, I find that the appellant has failed to address the concerns raised by the respondent in the decision letter. I conclude that, although there is some evidence of limited financial support from the sponsor, the appellant has failed to produce sufficient evidence to show on the balance of probabilities that she is mainly dependent on the sponsor and that it is necessary for her to rely on the relatively limited financial support provided by the sponsor to meet her basic needs.
20. I conclude that the decision does not breach the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom.

## **Notice of Decision**

The appeal is DISMISSED under the EEA Regulations 2016

**M.Canavan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

25 April 2023

**ANNEX**



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

Case No: UI-2021-000818

First-tier Tribunal No: EA/04510/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

Before .....

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**SURINDER KAUR**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**(NO ANONYMITY ORDER MADE)**

**Representation:**

For the Appellant: Mr A. A. Gondal of Berkshire Law Chamber

For the Respondent: Ms S. Lecointe, Senior Home Office Presenting Officer

**Heard at Field House on 31 January 2023**

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 07 September 2020 to refuse to issue an EEA Family Permit under The Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016') recognising a right of entry and residence as the family member of an EEA national. The appeal was brought under the EEA Regulations 2016.
2. First-tier Tribunal Judge R. Hussain ('the judge') dismissed the appeal in a decision sent on 20 August 2021. The judge noted that the appellant had applied for an EEA Family Permit on 26 August 2020 as a dependent direct

relative in the ascending line (mother). He summarised the relevant parts of the EEA Regulations 2016, including regulation 7. The judge summarised the respondent's reasons for refusing the application. The respondent was not satisfied that the appellant had produced sufficient evidence to show that she was dependent on the EEA sponsor as claimed. When the judge began his findings, he referred to the Upper Tribunal decision in *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 314. It was not disputed that the appellant and the EEA sponsor were related as claimed. The judge outlined the evidence relating to income and remittances as follows:

- '12. The Sponsor has been residing and exercising his EU treaty rights since 01.09.2018. As evidence of his financial support He (sic) has submitted his bank statement and a bank statement in the joint names of his father ( Mr (sic) Balwinder Singh) and the appellant. The appellant also submitted money exchange transfer schedule and receipts from 19.01.2019 to 16.06.20 which shows the sponsor son as the sender and the appellant mother as the recipient. The sponsor states that the appellant is dependent upon him and meets her entire expenses. However, it is apparent that the appellant clearly has an alternative source of income or financial support. This is because the appellant's bank statement shows that between 16.01.2019 to 18.02.2019 she received cash credits in the sum of 400,000Rs. However, the sponsor's money transfer schedule shows he only sent a sum of £1019.62 equivalent to 97,883.52 Rs during this period at an exchange rate of 96Rs to £1. Indeed , (sic) the schedule shows that over the whole 18 month period there were 11 money transfers totalling £4661.30 being equivalent to 447,484Rs, however the appellant's bank statements show that over this same period she received credits in the sum of at least 800,000 Rs. Of course, there have been some direct inter bank transfers from the sponsor into the appellant's bank account that, (sic) however this does not explain the very significant difference in the sums received by the appellant and the sums sent by the sponsor.
13. Whilst the sponsor son may well be sending some financial support to the appellant, I do not accept that she is genuinely dependent upon the sponsor. This is because the appellant has her husband, Mr Balwinder Singh, who is living in the UK holding an EEA Residence Card. He has permission to work and there was no credible evidence to suggest that he was not able to work and support his wife, the appellant. Indeed, find that this is the explanation for the difference in the sum credited into the appellant's bank account and the sums sent by the sponsor.
14. Neither the appellant nor the sponsor have submitted any evidence of any social, emotional or other physical factors to suggest that the appellant is dependent upon [the] sponsor in any other way.'

3. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

- (i) The judge erred in finding that the appellant was not dependent on the EEA sponsor when there is no requirement for her to be wholly financially dependent. It would suffice that she is dependent on the EEA sponsor for her essential needs.
- (ii) The judge failed to conduct a holistic assessment and failed to give adequate reasons for his findings.



- (iii) The judge's finding that she was dependent upon income from her husband was outside a range of reasonable responses to the evidence. There was no evidence to show that her husband sent remittances. The evidence indicated that her husband was also dependent on the EEA sponsor.
4. First-tier Tribunal Judge Rhys-Davies granted permission to appeal in the following terms:
- '3. There is merit in the Grounds. It is arguable that the Judge, in an otherwise commendably concise Decision, materially erred in concluding that the Appellant's husband was supporting her, if the Respondent had accepted that her husband was himself dependent on the Sponsor.
  4. Further, there is a related arguable material error in that while the Judge may well have been right to reject the Sponsor's claim that the Appellant was wholly dependent on him for her expenses, in light of other deposits into the Appellant's bank account, the Judge does not appear to have given the Sponsor the opportunity to address that point in evidence before reaching his conclusion.
  5. Finally, the Grounds are correct to note that having referred to *Reyes* and the requirement to carry out a holistic examination of all the factual circumstances, the Judge makes no reference to the circumstances of the Appellant besides her financial situation.'

### **Decision and reasons**

5. The appellant is the mother of the EEA sponsor, a Portuguese citizen. The evidence before the First-tier Tribunal judge at the date of the hearing (06 July 2021) relating to receipt of funds in her bank account was outdated. The appellant's bundle indicates there was no up to date bank statement for the appellant's account in India. The only statements I can see were scattered in the respondent's bundle. The account statement the judge referred to at [12] of his decision, by which he compared the income entering the appellant's account and the remittances sent by the sponsor, covered the period from 19 January 2019 to 16 June 2020.
6. I make several observations about the evidence. First, as the judge noted, this was a joint account in the names of the appellant and her husband, Balwinder Singh. Second, the evidence shows that the appellant's husband was issued with a five-year EEA Residence Card on 03 December 2019. Third, many of the money transfer receipts produced by the EEA sponsor show that the funds were to be collected in cash i.e. they were not sent by direct bank transfer.
7. There appears to be no evidence to show when the appellant's husband entered the UK. However, he was issued with a five-year EEA Residence Card as a dependent family member in December 2019. As an expert tribunal with an understanding of the issuing of family permits and residence cards, I find that it is reasonable to infer that it is likely that he entered the UK with an EEA Family Permit only a few months before. This then indicates that the income into the appellant's joint account that the

judge considered in the one-month period at the beginning of 2019 was likely to be at a time when the appellant's husband might still have been in India.

8. For the reason given by the judge, I accept that it is possible that some of the later funds in 2020 could have come from the EEA sponsor because he had permission to work in the UK. However, there was no evidence to show that he was in fact working or to indicate that he did, as a matter of fact, remit funds to his wife. Nevertheless, it was open to the judge to note that the income in the joint account appeared to exceed the amounts reflected in the money transfer records from her son.
9. The evidence produced on behalf of the appellant was not organised in a way that might assist a judge to understand the amount of money sent to the appellant by cross-referencing the amounts leaving the EEA sponsor's account in the UK with the money transfer receipts or any deposits in the appellant's account. There was no witness statement from the appellant to explain what her expenses were to ascertain whether the remittances were sufficient to meet her essential living needs.
10. Having conducted a calculation relating to the period from 19 January 2019 to 16 June 2020, I find that there is some force in the submission that the judge failed to take into account relevant matters. His finding that the additional funds may have come from her husband was unsupported by evidence and failed to take into account the fact that her husband might have been in India for a significant part of that time. Even if this was a matter of concern, I agree that it is one that should, as a matter of fairness, have been put to the EEA sponsor to explain at the hearing.
11. The point made in the grounds about the appellant's husband having been accepted as a dependent is a bad one when it is clear on the face of his residence card that he had permission to work once he arrived in the UK. It was not unreasonable for the judge to infer that he might have been earning an income after he arrived in the UK although there was no direct evidence to support the finding.
12. The point made in the grounds about the judge failing to conduct a holistic assessment is also weak. At [14] the judge did consider whether there was any broader evidence of social and emotional dependency but was correct to note that no other evidence was produced apart from evidence of financial remittances. Mr Gondal could point to the fact that the appellant is said to be living alone in India, but that does nothing to show that she is dependent on her son in any broader way when nothing of that sort was mentioned in the EEA sponsor's statement.
13. However, for the reasons given above, I accept that the judge failed to take into account material matters in assessing the evidence. The evidence before the First-tier Tribunal was out of date and was not prepared as clearly as it could have been. The judge might have still come to the same overall conclusion about the lack of evidence and the disparity

in income, but I am satisfied that the errors identified above are sufficiently material that they could have made a difference to the outcome of the appeal.

14. I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside.
15. The Upper Tribunal normally remakes the decision even if it involves making substantial new findings of fact. Although Mr Gondal suggested that the decision could be remade without a further hearing, the evidence in this case is so out of date that I do not consider that it is likely to be in the interests of the appellant to do so. Since a decision must be made on the evidence at the date of the hearing, it is in the interests of justice to allow time for the appellant to produce up to date evidence that should be compiled in a chronological order and cross-referenced.

#### DIRECTIONS

16. The case will be listed for a resumed hearing in the Upper Tribunal.
17. **The appellant** shall file and serve any up-to-date evidence relied upon at least 14 days before the resumed hearing.
18. **The appellant** shall file a schedule giving page references to the evidence produced in support of the appeal. The schedule shall cross-reference remittance receipts of funds sent by the EEA sponsor with any payments from his bank account or into the appellant's bank account where relevant. The schedule shall be filed and sent at least 14 days before the resumed hearing.
19. **The appellant** shall notify the Upper Tribunal within 14 days that this decision is sent:
  - (i) What witnesses, if any, will be called to give evidence at the resumed hearing; and
  - (ii) Whether any of the witnesses require the assistance of an interpreter, and if so, in what language.
20. Liberty to apply.

#### **Notice of Decision**

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

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

**M.Canavan**

Appeal Number: UI-2021-000818

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

01 February 2023