



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

Appeal Number: EA/01384/2021  
UI-2021-001476

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On Tuesday 19 April 2022**

**Decision & Reasons Promulgated  
On Friday 10 June 2022**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MISS HASNAHENA AFRIN**

Appellant

**-and-**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr N Shahin, Sponsor

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge S L Farmer promulgated on 16 June 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 4 January 2021, refusing her a family permit under the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”) to join her cousin in the UK (Mr Shahin - hereafter referred to as “the Sponsor”). Although the EEA Regulations have been repealed, this appeal proceeds in accordance with transitional arrangements.

2. The Appellant is a national of and resident in Bangladesh. The Sponsor is an Italian citizen exercising Treaty rights in the UK. The Appellant's mother, Ms Hosnara Begum, and her brother, Sakiful Islam, have also applied to join the Sponsor. They are all said to be dependent on the Sponsor. Ms Begum's appeal was allowed by First-tier Tribunal Judge G A Black on 8 November 2021. I understand from the Sponsor that Mr Islam's appeal has, as his sister's, been dismissed. An application for permission to appeal that decision was refused by the First-tier Tribunal but has been renewed to this Tribunal and remains pending. I emphasise that I am not here to decide that application nor to comment on Ms Begum's allowed appeal, save insofar as it is relevant to this appeal. As Ms Ahmed confirmed, the Respondent has not sought to appeal against Judge Black's decision.
3. However, the challenge to the Decision here is premised on the allowing of Ms Begum's appeal and I will to that extent need to say something about it.
4. I had before me a core bundle of documents relevant to this appeal and also Judge Black's decision. I also had the Respondent's bundle and Appellant's bundle as before the First-tier Tribunal. Given the nature of the challenge, however, I do not need to refer to any of those documents expressly. I also had a written list of issues submitted by Ms Begum from Bangladesh. I have read and take into account what is there said. I deal with those issues as relevant to the appeal before me below.
5. The Appellant remains in Bangladesh as do her mother and brother. The Sponsor attended in person to represent the Appellant. He was accompanied by Mr Ashique Rahman who is said to be a family friend. The hearing proceeded largely as a discussion of the appeal rather than formal submissions. As the Sponsor was in person and Mr Rahman appeared to have some knowledge of the case and the law, I allowed him to join in that discussion.
6. The Appellant's application for permission to appeal was made out of time and after Ms Begum's appeal had been allowed. It was asserted that "[a]fter contacting Tribunal several times, appeal decision was received by email from the Tribunal on 07 December 2021 (Proof of communication provided)". It is worthy of note that the grounds are wholly predicated on Ms Begum's appeal having been allowed. Those grounds could not of course have formed the basis of any application until well after the Decision was promulgated.
7. Nonetheless, the Judge considering the application for permission (First-tier Tribunal Judge R A Pickering) was satisfied having reviewed the correspondence that the Appellant did not receive the Decision at the time it was promulgated. He went on to grant permission in the following terms:
  - ... 3. Turning to the application. The grounds appear to be drafted by the appellant's mother. She points out that her appeal was allowed on the papers on 8 November 2021 and provides a copy of that determination. There is no information to suggest that this decision has been appealed.

4. It is at least arguably [sic] that there has been procedural irregularities in the appeal. Firstly, the appeals of the mother and daughter were not linked together. Secondly, the appeal of the appellant's mother refers to considerable evidence of dependency (§9) but the appeal of the appellant refers to there being a lack of documentary evidence (§10).

5. Permission to appeal is granted."

8. As I emphasised to the Sponsor, my function at this stage is only to determine whether the Decision contains an error of law. It is only if I so conclude that I could proceed to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

## **DISCUSSION**

9. Ms Ahmed in the course of discussion, accepted that this Tribunal (and indeed the First-tier Tribunal) has power to review a decision in the event of procedural irregularity. She indicated however that the Respondent did not accept that there had been any such procedural irregularity in this case.

10. I begin with the point raised in the grant of permission to appeal concerning the Tribunal's failure to link the two appeals (or in fact the three appeals as the Appellant's brother's appeal was also considered separately).

11. The Appellant's application for a family permit was made separately to those of her mother and brother. This is not a case where the Appellant's mother had made an application with her children as her dependents. As such, although the applications were refused on the same day, there is nothing on the face of the Respondent's decision which indicates any link between the decision under appeal in this case and any other.

12. Neither was there any indication in the appeals lodged with the First-tier Tribunal that those were to be linked or had any association with any other appeal. Ms Begum says in her list of issues that she and her daughter appealed to the First-tier Tribunal on the same day. However, the First-tier Tribunal receives a substantial number of appeals on a daily basis. As is evident from the appeal numbers in this case and that of Ms Begum, they were processed at different times (the appeal number for Ms Begum's appeal is EA/01164/2021 - over 200 cases earlier than this appeal). The surnames are different and there was no reason why the First-tier Tribunal would, should or even could have linked the appeals at that time.

13. It is also worthy of note that the Judges who considered the two appeals sit at different venues (Judge Black is a Judge at Taylor House whereas Judge Farmer sits at Hatton Cross). Finally, it is also worth noting that Judge Black was equally unaware that there was any other appeal which should be linked to Ms Begum's appeal. Although Judge Black noted that Ms Begum has two children, she was clearly unaware that they also had pending appeals. Judge Farmer cannot be criticised for not considering the possibility that there were other relevant appeals which should be linked.

The fault in that regard lies with the Appellant or rather, more accurately, with her mother who is conducting the appeal on her daughter's behalf.

14. Judge Farmer obviously cannot be criticised for not taking into account Judge Black's decision. That decision was not made at the time that she considered the Appellant's appeal. The Sponsor fairly accepted that to be the case.
15. The premise of the grounds and Ms Begum's list of issues however is that since the same evidence was relied upon in Ms Begum's appeal as in this, Judge Farmer has erred in reaching the opposite conclusion.
16. As a starting point, I set out the reasons given by Judge Black for allowing Ms Begum's appeal:

"9. I find that the appellant is a widow and she has two children born in 2003 and 2008 and her husband died in 2011. I have considered the evidence in the round and find that there is considerable evidence of transfers made to the appellant over a long period of time from 2016-2020 in the sum of £200 per month. The sponsor has lived in the UK since 2015 and it is reasonable that the evidence of the dependency would start in 2016 and continue to date. No issues are raised in connection with the sponsor. I am satisfied that it can be inferred from the amount of money transferred and the period of dependency that this would be to meet essential needs. In addition the appellant has produced a letter from the village chairman confirming that she is dependent on the sponsor, a letter from the sponsor confirming the same together with evidence to show that he has accommodation available. The appellant has also provided various certificates for birth, marriage and death and family certificates from which it her circumstances [sic] can be accepted. I am satisfied that she has provided documentary evidence consistent with her application."

17. I turn then to the reasoning provided by Judge Farmer for rejecting the Appellant's appeal as follows:

"10. It is accepted that the appellant is a family member of her cousin, the sponsor. It is also accepted that he has sent money transfers to the appellant's mother. However, despite this being specifically raised in the RRL no details have been provided by the appellant as to how this meets her essential needs. There is no evidence of who lives in her household and therefore how many people these funds support. I do not even have evidence of who lives in her household and whether any of them work. The appellant has a brother, does he work, for example and support his sister? There is no evidence of whether her mother has any other source of income, either from a pension, land or other financial support. There is no evidence of what costs she has, does she pay for accommodation or is this provided, what bills does she have to meet, does she need to pay for medical care or education. The statement that the appellant's mother is fully financially dependent on the sponsor to meet regular financial needs is not sufficiently detailed or specific to address these issues. There is therefore no cogent or sufficiently detailed evidence to establish dependency by the appellant.

11. Further I find that a document from Mr Karim Ullah who is described as 'Chairman' is of little evidential value. He states that to the best of his knowledge the sponsor is an Italian national living in the UK and providing

necessary financial support to her (sic) aunty and her family on a regular basis. There is nothing to state who this person is or on what basis he purports to have this knowledge and I attach no weight to it. In any event to the best of his knowledge is too vague to rely upon.

12. The burden is on the appellant to show, on the balance of probabilities, that she is dependent on her sponsor and I find for all these reasons she has failed to do so. This is despite the respondent specifically addressing his concerns in the RRL.”

18. Contrary to the suggestion in the grant of permission to appeal that the two Judges have reached opposite conclusions about the same evidence, it is clear when those passages are compared, that they are not inconsistent. Judge Black noted that there was “considerable evidence of transfers”. Judge Farmer did not reach any opposite conclusion. Judge Black was prepared to infer from the transfers coupled with other evidence of Ms Begum’s circumstances that Ms Begum was dependent on the Sponsor. Judge Farmer was not. It is for the Judge considering the appeal to attribute what weight he or she considers appropriate to the items of evidence. It is for that Judge to reach a conclusion based on that evidence. No error of law arises unless a Judge has failed to deal with evidence, has provided inadequate reasons for rejecting it or has reached an irrational conclusion based on that evidence. None of those criticisms can be made here. Judge Black did not refer to any evidence or detail of the living needs of Ms Begum and her family (which is the relevant question to be answered in relation to dependency). She has drawn inferences and accepted evidence which Judge Farmer was not prepared to accept from the village chairman. Judge Farmer has explained why she did not accept that evidence.
19. As I noted above, I am not here to comment on Judge Black’s decision. The money transfers were not rejected as not genuine and, on their face, they do indicate that the Sponsor has been sending money to Ms Begum. If Judge Black’s decision had been in existence at the time when the Decision was promulgated, Judge Farmer would obviously have had to consider what was there said (assuming it was put before her). Judge Black’s decision however would still only form a starting point at best (per the Devaseelan guidance) and would not be binding. Both appeals were decided on the papers. In neither appeal was either the appellant or the Respondent represented. The Sponsor did not give oral evidence. There is not even any written statement from him (his “evidence” is only in the form of a letter).
20. The inference which one Judge is prepared to draw from evidence of money transfers about dependency is not necessarily the inference which another Judge would draw. I note for example that Judge Black does not appear to have considered that, when the Sponsor started to support his aunt and her family, he was aged only sixteen (he was born in April 1999). His own financial ability to provide such support might also have been put in issue given that he has been a furloughed restaurant worker throughout the pandemic. Simply because he is the transmitter of the funds does not necessarily mean that they come from him (as opposed to from his family who also live in the UK but are not EEA nationals). I am obviously not

making any finding that this is the case. It is however an inference which might be drawn on the same evidence.

21. I accept of course that the Respondent has chosen not to appeal Judge Black's decision and her findings therefore stand undisturbed. It will be for the Appellant to decide whether it might be possible to make a second application relying on what is said in Judge Black's decision. Although the EEA Regulations are no longer in force, the consequence of Judge Black's decision is that Ms Begum will or may be entitled to some form of status under the EU Settlement Scheme. The Appellant remains Ms Begum's dependent and will have to consider whether she is able to make an application on that basis. That is however a matter for Ms Begum and the Appellant.
22. As it is, for the foregoing reasons, I am unable to find that there is any error of law in the Decision. The Judge has reached findings and a conclusion based on the evidence she had which she was entitled to find inadequate for the reasons she gave.

### **CONCLUSION**

23. For the foregoing reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision with the result that the Appellant's appeal remains dismissed.

### **DECISION**

**The Decision of First-tier Tribunal Judge S L Farmer promulgated on 16 June 2021 does not involve the making of an error on a point of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.**

Signed: L K Smith

**Upper Tribunal Judge Smith**

Dated: 20 April 2022