



IAC-AH- -V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01888/2021
[UI-2021-000758]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 28 February 2022**

**Decision & Reasons Promulgated
On the 20 April 2022**

Before

**UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

Between

**MR ASHRAFUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, counsel instructed by KC Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge G D Davison, promulgated on 26 August 2021. Permission to appeal was granted by First-tier Tribunal Judge Swaney on 27 October 2021.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. On 27 December 2020, the appellant applied for an EEA Family Permit to join his brother, Mr Md Mijul Islam, who is a Portuguese national residing in the United Kingdom and exercising treaty rights. That application was refused in a decision dated 20 January 2021. The Entry Clearance Officer (ECO) did not accept that the appellant and EEA sponsor were related as claimed owing to the late registration of the appellant's birth and the lack of other evidence of his parentage. Nor was it accepted that the appellant was financially dependent on the sponsor owing to the absence of evidence of the appellant's circumstances and financial position.
4. The appellant appealed, challenging both reasons for refusal but providing no additional documentation.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the respondent accepted the DNA evidence which indicated that the appellant and the EEA sponsor were related as claimed. Therefore, the sole remaining issue was one of dependency. The EEA sponsor gave evidence before the judge. The judge did not accept the account of the appellant's circumstances which was advanced at the hearing, considering it vague, insubstantial and that there were attempts to conceal the true position.

The grounds of appeal

6. There are two grounds of appeal. Firstly, that the judge placed excessive weight on immaterial factors and secondly, that his conclusions were irrational.
7. Permission to appeal was granted on the basis sought.
8. The respondent's Rule 24 response was received on 1 December 2021. The respondent opposed the appeal and provided detailed reasons.

The hearing

9. Neither Mr Gajjar nor Ms Ahmed had seen the Rule 24 response, the panel provided an opportunity for them to read an unmarked paper copy. Both representatives were happy to proceed, with Ms Ahmed confirming that her pre-hearing discussions with Mr Gajjar were in line with the content of the said response.
10. Mr Gajjar adopted the grounds of appeal, arguing that considered cumulatively, they amounted to a material error of law. In summary, these were that, firstly, on three occasions the judge had place excessive weight

on an irrelevant consideration and secondly, one of the judge's findings was irrational.

11. Under ground one, the first point argued was that the judge erred in placing weight on the sponsor's account that there was surplus funds. The judge made positive findings that the sponsor had sent funds to the appellant for a number of years at [11] and at [13] that out of BDT 17,000 sent monthly (around £150), BDT 3,000 was for the use of the appellant. Mr Gajjar contended that this was the bare bones of what was required for a Regulation 8 appeal. That the appellant was left with a surplus was immaterial and the judge's findings were undeveloped. As for the second point, it was irrelevant if the appellant had other people who could provide support as there was no requirement for exclusive support from an EEA sponsor. Regarding the third point, the judge was wrong to find at [18] that the credibility of the appellant's account was undermined by the likelihood that the funds sent by the sponsor supported 6-7 people. The evidence of the appellant and sponsor was that there were a substantial number of family members in Bangladesh. There was nothing to stop the sponsor from extending financial support to other people and this did not undermine the appellant's appeal. Mr Gajjar argued that the aforementioned factors were ones which swayed the judge's determination and as such were material.
12. Addressing the second ground, Mr Gajjar considered the judge's finding that it was incredible that the appellant could not find work in Bangladesh. There was a lack of evidence or context to this finding which did not take account of the appellant having left school in 1998, aged 10, that Bangladesh was a developing country and that there would not be a document trail to prove that the appellant could not find low-skilled work. Furthermore, the sponsor did not deny that the appellant had worked for a couple of days during that period.
13. On behalf of the respondent, Ms Ahmed relied on the Rule 24 response and confirmed that the appeal was resisted. She made the following points. It was plain from considering the judge's findings as a whole that he was not satisfied that the appellant was dependent on the sponsor because parts of the evidence were incredible, and the true situation was concealed. The evidence before the judge was lacking in that there was no indication of how the appellant and his siblings supported themselves between 2009 and 2013 and that there was no breakdown of the appellant's expenses. It was relevant to the finding of concealment that the presence of one sibling living with the appellant and another living in Portugal only transpired at the hearing. The judge had not placed undue weight on this matter. The issue was with the vague evidence of the sponsor. There was a lack of any clear picture as to the appellant's financial standing in Bangladesh. The judge considered all the evidence and gave adequate reasons for rejecting it. The respondent accepted that the sponsor did not have to provide the entirety of support to the appellant however, the concern was with the element of concealment and the lack of explanation as to the appellant's financial position and what

the surplus which was the majority of the funds sent, was spent on. On the second ground, Ms Ahmed argued that there was a high threshold to establish irrationality. The respondent's view was that the judge did not accept that the appellant left school when he said he did and that he had barely worked. This was not a case where there were unsupported findings, it was the appellant's claim which was unsupported. She urged us to dismiss the appeal.

14. In reply, Mr Gajjar disputed that there was any concealment. The appellant and sponsor had set out the make-up of the family in their witness statements. Regarding the finding at [18], that it was incredible that the appellant left school aged ten, the transfers dating from 2013 onwards meant that there was a need for support for the appellant in Bangladesh. It was unreasonable to expect the appellant to prove a negative, that being that he was unable to obtain employment in Bangladesh.
15. At the end of the hearing, we announced that there was no material error of law in the judge's decision and that the decision was upheld. Our reasons are set out below.

Decision on error of law

16. The first ground included the contention that the judge placed "excessive weight" on a number of immaterial factors. The first of those factors concerned the surplus funds sent by the sponsor, regarding which the judge found that the sponsor was unable to explain, at [13]. The judge said as follows:

"The sponsor is remitting 17,000 taka a month and can only attribute approximately 3,000 of the same to the Appellant."

17. The grounds argue, with some force, that the fact there were surplus funds was irrelevant to the question of whether the appellant's essential needs were met and that a shortfall would be more of a concern. Nonetheless, the judge was not concerned with whether there was a surplus but the inability of the sponsor to explain what the excess funds were used for. Given that there was a surplus of BDT 11,000 every month (as the appellant's brother was also receiving BDT 3,000 per month) on the sponsor's account, the judge cannot be criticised for considering the failure to account for the majority of the funds sent to reflect badly on the sponsor's credibility.
18. A second alleged error under the first ground concerns the judge's findings as to the vague evidence presented by the sponsor and appellant and the late mention of other siblings. Mr Gajjar rightly submitted that it was irrelevant whether the appellant accessed other sources of support. It was further argued that it was irrelevant if other family members were also reliant on the sponsor's support. If this was what the judge found, it would have been an error. However, the judge's credibility findings concerned

the fact that the full picture had been withheld and various issues were emerging during cross-examination. There was no reference in the visa application nor in the appellant and sponsor's witness statements to the BDT 17,000 being for the use of anyone other than the appellant. The mention of relatives in the witness statements is deliberately vague and there is no explanation as to why the appellant's financial and domestic circumstances were not explained in detail.

19. The first ground, in effect, amounts to a series of disagreements with the weight placed by the judge on the evidence. It is well established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law *Green (Article 8 - new rules)* [2013] UKUT 254.
20. The criticisms of the weight attached by the judge to the matters referred to in the grounds do not undermine the secure findings of fact made. Those findings include that the appellant and sponsor's account of the alleged dependency was vague, lacking in detail and the presence of another brother residing in the family home in Bangladesh as well as a fourth brother living and possibly working in Portugal only emerged during the hearing. The judge did not err in expressing his concerns as to the sponsor's inability to explain how the other two brothers supported themselves given the sponsor's response, as follows; "*They somehow live their lives and sisters help them.*" It was only after further questioning that the sponsor admitted that one brother lived with the appellant and the other in Portugal.
21. The grounds do not challenge the judge's findings at [12-15] which were, in summary, that the appellant has not explained his financial position, that the sponsor was only able to guess what the funds he sent were spent on and much of it was unaccounted for. Furthermore, the written and oral evidence was vague and relevant details withheld which led to the judge concluding that the appellant and sponsor were trying to conceal the true position. It is also relevant that at [6(v)] the judge records that there was no breakdown of the appellant's expenses in the written evidence. The latter point was raised by the ECO in the decision letter and the judge was entitled to consider that the appellant was put on notice that he would have to establish that the sponsor was meeting his essential living costs. In addition, there was no evidence before the judge to support the description of living costs provided by the sponsor, for the first time, at the hearing.
22. In the second ground it is argued that the judge made irrational findings as to the inability of the appellant to obtain any work in Bangladesh.
23. According to the appellant's account, he is aged around 32, with no mention of health or disability concerns and that he left school aged 10. The sponsor claimed that the appellant had only obtained the odd day of work in a period of over twenty years. Mr Gajjar argued that the judge's finding on this issue was not based on the evidence. On the contrary, the

burden of proof was on the appellant to provide sufficient detail to support his claims and there was an absence of background or other evidence before the judge, going to the prevalence or otherwise of jobs in Bangladesh. It was open to the judge to reject the appellant's claims in the absence of any attempt by the appellant or sponsor to address this issue in any detail as well as the general vagueness of the account presented and the late disclosure of other relatives. The threshold for irrationality is high and the considerations of the judge were far from irrational.

24. This appeal is dismissed.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed: TKamara

Date: 8 March 2022

Upper Tribunal Judge Kamara

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