



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

Appeal Numbers: UI-2021-000873
EA/02062/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 27 April 2022**

**Decision & Reasons Promulgated
On 12 October 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MD RAIHAN MIAH
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Did not attend and was not represented

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

DECISION AND REASONS

1. The appellant in this appeal was not represented before me. This was surprising because he had instructed Londonium Solicitors and a substantial bundle had been made available in electronic form which I have considered.
2. The case was listed for hearing remotely and the standard instructions require advocates to log into the Teams website half an hour before the hearing. Mr Walker, I know, was logged on at approximately 10.20 because I came into the hearing room not expecting to find anyone there but he was and he confirmed that he had had no difficulty at all logging in.

My clerk at my request did try and contact the solicitors to see if they offered any explanation for not attending. It is not the business of the Tribunal to chase people who do not appear but I have experience of representatives trying to log on and not being able to for reasons that are not properly explained and I wanted to do all I could to discount the possibility of there being some administrative error on the part of the Tribunal that prevented the appellant contacting us. My clerk found nothing to indicate any such problem and found the appellant's solicitors to be rather unhelpful. They merely referred her to another number which was not answered when she made a telephone call.

3. I checked that the Tribunal's record confirmed that notices of hearing had been sent to both parties and, after some discussion with Mr Walker I gave an extempore judgement.
4. Since giving an extempore judgment I have received a message from the appellant's representatives attributing their absence to an administrative error on their part. I asked my clerk to notify the representatives that I had given an extempore judgement dismissing the appeal. As far as I am aware I have not been asked to set it aside.
5. Mr Walker summarised the respondent's case in extreme form because I had indicated to him my preliminary view was that the appeal should be dismissed. This judgment explains why I dismissed the appeal.
6. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent by an Entry Clearance Officer on 5 January 2021 refusing him an EEA family permit. The appellant said that he was dependent on his older brother, a citizen of Italy exercising his treaty rights in the United Kingdom, but the respondent did not accept that dependency had been established.
7. I begin by considering the respondent's reasons in the decision dated 5 January 2021. The respondent acknowledged and seemed to accept evidence that the appellant's brother had sent him about £100 a month for the eighteen months between June 2019 and December 2020. The respondent did not accept that this evidence established financial dependency. The respondent said:

"I would expect to see substantial evidence of this over a prolonged period and evidence of this prior to when your sponsor arrived in the United Kingdom".
8. The respondent raised as an additional point the lack of evidence of the appellant's own financial circumstances, so the respondent did not feel able to conclude that any sums received were for the purpose of meeting the appellant's essential daily living needs.
9. Knowing that this was the basis of refusal, the appellant produced a bundle of documents including a witness statement that he had made and another statement from his brother in the United Kingdom and various documents relating to their financial dealings. In his statement the appellant asserted that his brother had been "fully responsible for me financially". He said that Bangladesh had a "cash and promise" based

economy, so he should not be expected to have good documentary evidence but he said that he was not employed and that all of the money sent from his brother “goes towards my essential living costs”.

10. He then gave figures for his monthly expenditure including sums for what he called pocket money which in total came to 10,000 Bangladeshi taka.
11. The appellant’s brother’s statement confirmed the appellant’s claim that the brother had sent regular sums to the appellant and that the appellant was unemployed.
12. The First-tier Tribunal accepted that the appellant’s brother regularly sent him money in the region of £100 to £150 per month but the judge did not accept that the appellant was dependent on that money. The judge noted that the appellant and his brother gave consistent evidence that the appellant was unemployed and relied solely on income from the appellant’s brother in the United Kingdom but noted there was no evidence to support these assertions.
13. The judge was not impressed with evidence that purported to explain the absence of supporting documents. I set out below paragraphs 29 and 31 of the First-tier Tribunal’s decision. These state:

“29. The sponsor made no reference in his witness statement to the difficulty of obtaining documentation in Bangladesh; the only explanation given there for lack of documents being that he ‘lost all my paperwork while making preparation to come to the UK’ which appears to relate only to money transfer receipts from Italy. He then explained the lack of documentation from Bangladesh in response to Ms Jones’s questioning by saying on a couple of occasions (to paraphrase) that there isn’t a system in Bangladesh for documents to be provided as everything is done orally and in cash. I have seen no evidence supporting the assertions by the appellant and sponsor regarding the lack of documentation system in Bangladesh and in absence of this evidence do not find it plausible that no documentation could have been found. I have had regard to the Cash Pickup Remittance Payment slips from Dutch Bangla Bank Limited which indicates that there are some documented transactions in Bangladesh. I have also had regard to the lack of evidence of showing any attempt by the appellant to obtain supporting evidence.

30. Similarly, statements which related to other potential sources of income were unsubstantiated. In particular, no evidence was adduced regarding the appellant’s employment status such as, for example, evidence related to attempts at finding a job, or relating to the position of his brother or parents in Bangladesh.

31. Looking at the evidence in the round I do not find the assertions made regarding the difficulty of obtaining documentation relating to transactions in Bangladesh to be credible and I do not find that the appellant has shown on the basis of the evidence adduced that he is in a situation of real dependence on that brother.”

14. I find these are the essential paragraphs in the First-tier Tribunal’s Decision although I do note Mr Walker’s submission drawing to my attention paragraphs 26 and 27 where in summary the judge confirmed that she

accepted money was sent but did not accept that dependency was established.

15. Permission was granted particularly because it was arguable that “the judge erred in needing to consider the reasons why the appellant needed financial support or whether they were able to support themselves by working”. I find that main reason hard to understand. What the judge was concerned about was the absence of evidence that the appellant was looking for work. Such evidence, if persuasive, could have helped establish that the appellant depended on money from his brother rather than merely welcomed it as a supplement to his other income.
16. Overall, I find that the judge has looked at the evidence in its entirety, addressed her mind to the correct legal tests and reached a conclusion that the appellant does not like. It may be that a different judge listening to the evidence could have reached a different conclusion but it is not an error of law to disbelieve a witness any more than it is an error of law to believe a witness, provided that some sensible reasons are given, and they are. The judge’s main reason was that the extent of the financial transactions should have been supported by more documentary evidence or at the very least better explanations for not being able to produce it and should have shown that the appellant not only received money but was not able to get work. That could have been shown, for example, by reference to unemployment rates in his area of residence and details of attempts he had made to find work. These things collectively are sufficient to justify the judge’s conclusion that the evidence was not persuasive.
17. For the reasons given above, I find that no error of law has been established and I dismiss the appeal.

Notice of Decision

18. The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 8 September 2022