



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

Case No: UI-2023-005003

First-tier Tribunal No: EA/10130/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

8<sup>th</sup> March 2024

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Razia Begum**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr P Shea, Counsel, instructed by Whitefield Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 23 February 2024**

**DECISION AND REASONS**

1. To avoid confusion, the parties are referred to herein as they were before the First-tier Tribunal.
2. By the decision of Upper Tribunal Judge Keith, issued on 17 January 2024, the respondent had been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Chowdhury) promulgated on 6 March 2023 allowing the appellant's appeal against the respondent's decision of 20 September 2022 to refuse her application made as far back as 25 December 2021 for an EUSS Family Permit as the mother of a person with EUSS settled status.
3. In summary the application was refused because the respondent was not satisfied that the appellant had demonstrated that she was the dependant of a relevant EEA citizen, as required under Appendix EU (Family Permit) of the Immigration Rules. Whilst the appellant had submitted evidence of the money

transfers, between August 2020 and January 2022 from the sponsor, there was no evidence as to her own domestic circumstances in Pakistan. The refusal decision stated, "Without such evidence I am unable to sufficiently determine that you cannot meet essential living needs without financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner." Clearly the respondent put the appellant and the sponsor on notice as to the lack of evidence as to the appellant's domestic circumstances in Pakistan and the issue as to whether that support that she did get from the sponsor was to meet her essential needs.

4. At paragraph 12 of the decision of the First-tier Tribunal the judge stated, "I accept the Sponsor's oral evidence that his mother, the Appellant is wholly dependent upon him and has no other sources of financial support". At paragraph 13, the judge noted there were remittances of which evidence had been provided to the respondent and further evidence and continued remittances up to January 2023. At paragraph 15 the judge found:

"Together with his (the Sponsor's) oral evidence I find that evidence of dependency has also been provided in the form of money transfer remittances slips which I find, to the appropriate standard of proof, clearly demonstrates the Appellant's account of relying upon the Sponsor for financial support."

At paragraph 16 of the decision, the judge averred:

"I find, on the balance of probabilities, this Appellant has demonstrated that she is dependent upon her son for her essential living needs. It is accepted as per Mr Ogbewe's submissions that remittances in themselves do not demonstrate dependency. However, taken in context i.e. the length of time this man has been supporting his mother, and his oral evidence which I have heard through cross examination, I find that the standard of proof has been met in this matter."

5. In summary the grounds argued that for the appellant to prove that she is dependent as claimed, she must show that the funds that she receives are necessary for her to meet her essential living expenses, which she failed to do, and that no findings were made in this regard by Judge Chowdhury. The grounds state, "It is therefore unclear how it has been concluded that the appellant is said to be dependent on the sponsor, rather than simply in receipt of additional funds."
6. In granting permission on all grounds, Judge Keith acknowledged that a mere disagreement or a lack of detail in a decision does not disclose an arguable error of law. I would also add that in general it is not appropriate to interfere with a judge's decision where findings have been made after hearing the oral evidence unless no judge properly directed could have reached the same conclusion. However, Judge Keith was satisfied that the application for permission did disclose arguable errors of law, on the basis of inadequate reasons. Judge Chowdhury found the appellant had demonstrated that she was dependent upon the sponsoring son, but this was in the context of the respondent having specifically raised the issue of a lack of evidence of the appellant's domestic circumstances in Pakistan notwithstanding evidence of money transfer receipts during 2020 to 2022. In Judge Keith's view, it was arguably unclear how the judge reached this conclusion in the arguable absence of any findings about the

appellant's personal circumstances in Pakistan which the respondent had specifically identified as a key issue about which it had concerns.

7. Before me, Mr Bates raised three points, first of all pointing out that it was necessary under EUSS for the appellant to demonstrate that she was dependent before the specified date of 31 December 2020. In response to that, Mr Shea says that the judge found evidence of receipts dating back prior to the specified date from August 2020 and it is for that reason, he suggests, that the judge did not specifically address the question of the specified date. However, the judge should have dealt with this important point.
8. The second matter raised by Mr Bates is that the appellant and another son, the brother of the sponsor, is living in Italy and when questioned at the First-tier Tribunal the sponsor was unable to say what his brother was contributing to the appellant. Mr Shea says that the sponsor could not make evidence up. However, Mr Bates does not say that there should have been such evidence, only that the sponsor was unable to say whether the monies this sponsor supplied to his mother were necessary to meet her essential needs, or whether she was receiving monies from elsewhere. The sponsor could not say this brother was not sending him money, he simply did not know. I am satisfied that that is a good point that the judge has not adequately dealt with.
9. More significantly, I am satisfied that it is quite clear from the decision of the First-tier Tribunal that the judge failed to engage with the necessity of the appellant to demonstrate the funds she receives from any source be it from the sponsor are necessary for her to meet her essential living expenses. The finding that she is dependent is inadequately reasoned and amounts to a material error of law. The judge simply did not address whether the funds she receives were necessary in the finding that she was dependent.
10. In the light of the above I am satisfied that this is a decision which is flawed by a material error of law, it must be set aside and remade.
11. Mr Shea submits that the matter should be remitted to the First-tier Tribunal. Mr Bates takes no firm position from that. He does not oppose being remitted. Mr Shea explained that there is likely to be further evidence, perhaps from the brother, the sponsor, his son or the appellant, and perhaps other evidence as to the appellant's financial circumstances in Pakistan. Reference has also been made to me as regards the possibility of adducing utility receipts, etc. I am satisfied that those are all legitimate sources of evidence that the First-tier Tribunal might be faced with and therefore I am satisfied that this is a case which meets the requirements of paragraph 7.2 of the Practice Direction and remitted to the First-tier Tribunal. I do so with no findings preserved.

### **Notice of Decision**

12. The respondent's appeal to the Upper Tribunal is allowed.
13. The decision of the First-tier Tribunal is set aside with no findings preserved.
14. The appeal is remitted to the First-tier Tribunal to be heard de novo.
15. I make no order as to costs.

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 March 2024**