



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

Case No: UI-2022-006190  
UI-2022-006191  
First-tier Tribunal Nos: EA/03358/2022  
EA/53919/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 2<sup>nd</sup> of May 2024

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**  
**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ASZAD IBRAHIM SODAWALLA**  
**ATEKA SALIM INDAWALA**  
**(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellants: Mr. M. Rashid, Counsel instructed by Hi Solicitors  
For the Respondent: Mrs. R. Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 18 April 2024**

**DECISION AND REASONS**

1. By way of a decision promulgated on 4 December 2023, I set aside the decision of the First-tier Tribunal. The decision came before us to be remade. The sole issue for consideration was whether the appellants had shown that they were dependent on the sponsor for their essential living needs.

**The hearing**

2. The sponsor attended the hearing. She was assisted by the interpreter, Mr. Y. Sayani, who confirmed that they both fully understood each other. The language used was Gujarati.

**Preliminary issue**

3. The appellants were directed as follows in the decision promulgated on 4 December 2023:

“The Appellants shall, no less than seven days before the resumed hearing, send to the Upper Tribunal and to the Secretary of State’s representative an updated, consolidated, indexed and paginated bundle, containing all the documentary evidence they wish to rely upon in support of her appeal. Witness statements must be signed, dated, contain a declaration of truth, and shall stand as the evidence in chief of the maker, who shall be made available for the purposes of cross-examination and re-examination only (if any).”

4. The appellants’ bundle was sent to the Upper Tribunal on 17 April 2024, one day prior to the hearing and in breach of these directions. Further, the bundle was in no coherent order, with no index and material documents scattered throughout.
5. Mr. Rashid was asked whether he had an explanation for why the bundle had not been served in accordance with these directions. As Mr. Rashid did not know why it had been served late, the Tribunal adjourned in order that he could obtain written confirmation from his instructing solicitors explaining the failure to comply.
6. Mr. Rashid obtained an explanation but said that written confirmation would follow as the senior partner was away from the office. The Tribunal resumed. The letter arrived shortly afterwards, and stated as follows:

“We investigated and found that the reasons for the late bundle submission was that the case handler assigned to this case left the firm without properly handing over the papers due to domestic violence difficulties. She did not diarise the dates, hence this error occurred. I apologise the court and request the court to accept the bundle.

In future we will make sure that this doesn’t happen, and we will make sure that if any case worker leaves the firm, we will assign matter to new case worker without any delay.”

7. We remind the appellants’ representatives that the overriding objective set out in The Tribunal Procedure (Upper Tribunal) Rules 2008 imposes an obligation to cooperate with the Tribunal to deal with cases fairly and justly. Directions are made by the Tribunal in the expectation that they will be complied with. Any further failure by the appellants’ representatives to comply with directions is likely to be met with appropriate sanctions, including where necessary, the failure being reported to the relevant regulatory body.

## **Remaking**

8. When the Tribunal turned to remake the decision, Mrs. Arif said that she had spoken to Mr. Rashid and had indicated to him that the respondent conceded that the requirements of dependency were met. She referred to [20] of the Error of Law decision which preserved the finding made in the First-tier Tribunal that the appellants had provided prima facie evidence of their financial dependency on the sponsor. Paragraph [24] states:

“The evidence provided shows that there have been remittances from the sponsor to her son for at least the past three years. The sums sent are not insignificant, and I must accept that this is prima facie evidence of the appellants being financially dependent upon the sponsor.”

9. Mrs. Arif stated that, given this finding, the respondent conceded that the appellants had shown that they were dependent on the sponsor, as required.

Given that the issue of dependency was the only issue before the Tribunal, she conceded that the appeals should be allowed.

10. We checked with Ms Arif that she is familiar with the test that is to be applied and she assured us that she is. The Tribunal indicated that it was surprised by the concession that the appeal should be allowed, but that this was a matter for the respondent, and it was not a concession which the Tribunal was prepared to go behind.
11. Accordingly as the respondent had accepted that the appellants were dependent on the sponsor for the purposes of the EU Settlement Scheme in respect of the first appellant, and the Immigration (European Economic Area) Regulations 2016 in respect of the second appellant, we allow the appeals.

**Notice of Decision**

12. The first appellant's appeal under the EU Settlement Scheme is allowed.
13. The second appellant's appeal under the Immigration (European Economic Area) Regulations 2016 is allowed.

**Kate Chamberlain**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
26 April 2024