



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

Case No: UI-2023-005339

First-tier Tribunal No: EA/01460/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 19<sup>th</sup> of September 2024

**Before**

**UPPER TRIBUNAL JUDGE BULPITT**

**Between**

**Shaukat Ali**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Faryl – Counsel instructed by Scarsdale Solicitors  
For the Respondent: Ms Nwackuku – Senior Home Officer Presenting Officer

**Heard at Field House on 9 September 2024**

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Thorne (the Judge) dated 12 August 2023 in which the Judge dismissed the appellant's appeal against the respondent's decision to refuse to grant him a Family Permit under the European Union Settlement Scheme (EUSS).

**The Judge's Decision**

2. The Judge made his decision after an in person hearing conducted on 31 July 2023 at which the parties had adduced documentary evidence and the appellant's son Mohamed Asif gave oral evidence. At that hearing all parties agreed that the central issue for the appeal was whether on the date the transition period following the UK's departure from the European Union ended (the specified date) i.e. 31 December 2020, the appellant was dependent on Mr Asif and Mr Asif's wife Sara Holiova who is an EEA citizen, to meet his essential living needs.

3. At [18] of his decision the Judge sets out his conclusion that the he was not satisfied that the appellant was dependant on Mr Asif and Ms Holiova to meet his essential living needs on 31 December 2020. He gives his reasons for that conclusion in the remaining four short paragraphs ([19] - [22]) of the decision, before dismissing the appeal.

### **The appellant's appeal**

4. The appellant was granted permission to bring this appeal by First- tier Tribunal Judge Landes on five grounds. In the first ground it is asserted that the judge failed to consider oral evidence given by Mohammed Asif which was material to the central issue of the appeal or alternatively, if he did consider that evidence, he provided inadequate reasoning to explain the conclusion he reached about that evidence. In the second ground it is asserted that the Judge erred in his assessment of Mr Asif's evidence when stating at [21] of his decision that money Mr Asif sent to the appellant for medical care is not money for an 'essential living need'. In the third ground it is asserted that the Judge erred by making no findings about the reliability of Mohammed Asif's evidence. In the fourth ground it is asserted that the Judge made a perverse finding at [20] of his decision about Mr Asif's explanation of documents produced on the day of the hearing. In the fifth ground it is asserted that the Judge erred by failing to give adequate reasons which consider the question of dependency in the broad sense including the appellant's physical and social conditions as well as his financial conditions as is required by the Court of Appeal decision in Latayan v SSHD [2020] EWCA Civ 191.

### **The Hearing**

5. The appeal hearing was conducted remotely. I was present at Field House but the parties attended via Cloud Video Platform (CVP). No issues arose from the hearing proceeding in this way. The video connection was clear and it was possible to communicate effectively throughout the hearing.
6. Ms Faryl relied on the written grounds of appeal, which she submitted established that the Judge erred in law. She argued that if such an error were established the matter should be remitted to the First-tier Tribunal for a re-hearing of the appeal.
7. The respondent did not file a response to the notice of appeal but at the hearing Ms Nwackuku opposed all five grounds of appeal stating that they fixated on the evidence about the appellant's medical fees but miss the key issue which remains the question of whether the appellant was dependant on Mr Asif and Ms Holiova on 31 December 2020. Whilst Ms Nwackuku acknowledged that the Judge's decision is a short one, she argued that this was a reflection of the limited evidence that was adduced on this issue and submitted that the reasons given by the Judge for his conclusion that dependency on 31 December 2020 had not been established were adequate and this was a conclusion he was entitled to reach.
8. In reply Ms Faryl submitted that there was evidence before the Judge that the appellant was dependant on Mr Asif and Ms Holiova since the death of his wife on 2019 but that the Judge had erred by failing to consider that evidence and giving inadequate reasons for his conclusions on the issue as asserted in the grounds of appeal.

9. At the conclusion of the hearing I reserved my decision which I now provide with my reasons.

## Analysis

10. It is convenient to deal with grounds one, two, three and four together since they all relate to the Judge's consideration of the evidence given by Mr Asif. The Judge summarises that evidence very briefly at [7] and [8] of his decision and analyses it, again very briefly, at [20] and [21] of the decision. The assertion made in the first ground of appeal is that the summary of the evidence from Mr Asif provided in the Judge's decision is incomplete and that the Judge has failed to consider other evidence that was given orally at the hearing by Mr Asif. In support of this assertion, and following directions being issued by the Tribunal, counsel who represented the appellant at the First-tier hearing has provided a statement together with his note of the evidence given by Mr Asif at the First-tier Hearing. It is recorded in counsel's statement and notes that having been granted permission to give oral evidence in chief, Mr Asif said that the money he sent to the appellant is not just for doctor fees but also for food expenses as "his pension is less." It is further recorded in counsel's notes that, when asked when he started sending money to the appellant, Mr Asif replied that it was when the appellant stopped working which was just after Mr Asif's mother (the appellant's wife) died in 2019.
11. The statement and notes of Mr Asif's evidence provided by counsel have not been challenged and given the source of this evidence I am satisfied that they are likely to be true. They demonstrate that Mr Asif gave more explanation about the purpose of him sending money to the appellant and a more detailed explanation of when he started sending money to the appellant, than the Judge has recorded in his decision. They also reveal that Mr Asif gave evidence about whether the appellant's other source of income was sufficient, which the Judge has not recorded or reflected in his decision. This is key evidence about the fundamental issue of whether the appellant was dependant on Mr Asif and his wife on 31 December 2020.
12. I remind myself that even if he has not mentioned evidence I should conclude that the Judge has considered that evidence, unless there is compelling reason to the contrary (see [2(iii)] of Volpi v Volpi [2022] EWCA Civ 464). Having done so however, I am satisfied that there is compelling reason to conclude that the oral evidence of Mr Asif about his money transfers to the appellant has been overlooked or not adequately considered by the Judge. I agree with the assertion made in the third ground of appeal that there is nothing in the Judge's decision to show that the evidence has been assessed and no indication of whether the Judge found Mr Asif's oral explanation reliable or not. The Judge makes no reference in his analysis of Mr Asif's evidence at [20] and [21] to Mr Asif's oral evidence concerning the timing and purpose of the money he sent to the appellant. Indeed at [21] of the decision the Judge only makes reference to the limited explanation about the purpose of the money being sent to the appellant that was provided in Mr Asif's witness statement, without any reference or analysis of the additional oral evidence that was given at the hearing.
13. The analysis of the evidence in Mr Asif's witness statement provided at [21] of the decision is the source of the complaint in ground two which asserts that the Judge erred by stating that medical care is not an essential living need. I am not satisfied that is what the Judge was in fact saying at [21]. In full, the paragraph

reads: “*moreover, both Mohammed Asif and S in their witness statements stated that the money they sent [the appellant] was used by him only ‘just for his medicine and doctor’s fees.’ This is not the same as being necessary to meet his essential living needs*” Rather than saying that medical needs do not amount to essential living needs (which would be a surprising conclusion to reach) it appears to me that the Judge is saying that just because money sent is used for paying for medicine and doctors fees that does not mean the money is necessary for meeting those essential needs, though I accept this is not clear.

14. The confusion over the Judge’s analysis at [21] serves only to emphasise its two crucial failings. First the Judge’s reasoning is far from clear and therefore is not adequate to enable the appellant to understand why he has been unsuccessful. Secondly and most importantly the reference only to Mr Asif’s evidence in the witness statement without any recognition in the paragraph or elsewhere in the decision to the relevant additional evidence that Mr Asif gave orally, compellingly indicates that it was only the written witness statement that was considered by the Judge.
15. Overall, giving due respect to the Judge’s expertise, it is simply not possible reading his decision to conclude that the Judge has considered the crucial oral explanation Mr Asif gave for when and why he started sending money to the appellant.
16. The analysis the Judge does provide at [20] of Mr Asif’s oral evidence about the documents that were produced on the day of the hearing is the source of the complaint made in the fourth ground of appeal. The ground asserts that the Judge’s finding that “*I conclude that there is inadequate explanation as to what these documents mean and I simply do not accept that they prove on the balance of probabilities that money was sent from Mohammed Asif to A on these claimed dates*” was perverse. As the grounds acknowledge perversity is a high threshold to reach. The problem when assessing whether this high threshold has been reached is that having referred at [8] to the fact that Mr Asif had provided an explanation for these documents, the Judge has provided no elucidation of why he found that explanation inadequate. Instead [20] of the decision provides only a statement of conclusion. It is not possible to understand from the decision why the Judge has rejected Mr Asif’s explanation of the documentary evidence.
17. Given that, as identified at [22] of Latayan, oral evidence can be sufficient to establish dependency if it is not found wanting, I am satisfied that the Judge’s failure to give reasoned consideration to the oral evidence from Mr Asif about the timing of his money transfers to the appellant, the purpose of the money transfers to the appellant, and Mr Asif’s explanation for the documentary evidence amounts to an error of law. The Judge has failed to take into account evidence or resolve the conflict about the crucial evidence concerning the timing and purpose of the money transfers, and has failed to give adequate reasons for his rejection of Mr Asif’s explanation for the documents. This is a material error of law because, notwithstanding Ms Nwackuku’s submission, this evidence goes directly to the fundamental issue in the appeal.
18. I am also satisfied that the fifth ground of appeal identifies an error of law in the Judge’s decision because the conclusion at [22] that “*there is inadequate clear evidence relating to A’s claimed inability to undertake personal care*” is similarly inadequately reasoned. Again this is an expression of the conclusion about the evidence reached by the Judge but without any reasoning being given for why

that conclusion has been reached. It does not enable the appellant to understand why his appeal was unsuccessful.

19. As a result of these errors of law it is necessary to set aside the decision of the Judge, and I agree with Ms Faryl's submission that the appeal should be remitted so that there can be a fresh hearing at which the key factual issue of whether the appellant was dependent on Mr Asif and Ms Holiova in December 2020 can be resolved.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to hear the appeal again.

### **Directions**

1. The appeal will be heard again on the first available date at the Manchester Hearing Centre by a Judge other than Judge Thorne.
2. No later than two weeks before that hearing, the appellant is to provide up to date witness statements which, consistent with the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal (at [5]), will stand as the totality of the evidence in chief of the person giving the statement.

**Luke Bulpitt**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**11 September 2024**