



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

Case No: UI-2022-002388  
UI-2022-002398

First-tier Tribunal No:  
EA/11700/2021  
EA/11696/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 24 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**MANJIT KAUR (1)**  
**INDERJOT SINGH ATWAL (2)**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr H Rashid, counsel, instructed Direct Access  
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 15 June 2023**

**DECISION AND REASONS**

**Background**

1. The appellants are nationals of India. The first appellant is the mother of the second appellant who was born in October 2006. On 5 February 2021 they applied for family permits as extended family members of Mr Tajinder Singh Heer under Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). Mr Heer is the brother-in-law of the first appellant. He is married to the first appellant's sister.

2. The applications made by the appellants were refused for reasons set out in decisions dated 9 February 2021 and 12 February 2021. The respondent noted the claim made by the appellants and concluded, *inter alia*, that the appellants had failed to provide evidence to show that they are dependent upon Mr Heer. The respondent said there was limited evidence in the form of money transfer remittance receipts and the evidence in isolation does not establish that the appellants are financially dependent on their sponsor.
3. The appellants' appeal against that decision was dismissed by First-tier Tribunal Judge Row for reasons set out in a decision promulgated on 9 March 2022.
4. At paragraph [18] of his decision Judge Row said that he accepts it is possible that the appellants have been financially dependent only since September 2019. The appellants claim there is no time period that the appellants have to demonstrate they have been dependent upon the sponsor and the finding that the appellants have been financially dependent since September 2019 is sufficient to establish that the requirement for dependency as set out in the 2016 Regulations is met. The appellants refer to the decision of the Upper Tribunal in Reyes (Regs: dependency) [2013] UKUT 314 in which the Tribunal highlighted that questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The appellants claim Judge Row simply considered financial dependency and has completely failed to consider the social and physical conditions of the appellants. The appellants claimed they have no other source of income, and are entirely dependent on the sponsor. The appellants claim Judge Row failed to address the question whether appellants need financial support to cover their basic essential needs. In support of the appeal the appellants had provided the rental agreement for the appellants accommodation in India, household shopping receipts, utility bills, and the money transfer receipts.
5. The appellants also claim Judge Row failed to consider or engage with the claim made by counsel for the appellants that the death certificate for the first appellant's husband had been provided by the first appellant at the time of the original application and had been considered by the respondent. The respondent did not take any issue with the death certificate or the appellant's claim that the first appellant's husband died in 2009. The appellant had not received a copy of the respondent's bundle and was unaware that a copy of the death certificate had not been included in the respondent's bundle.
6. Permission to appeal was granted by First-tier Tribunal Judge Grimes on 11 May 2022.

7. The respondent filed a rule 24 response dated 10 June 2002 in which she said that the appeal is opposed and that in summary, the judge reached a decision that was open to him. The respondent also indicated that a copy of the first appellant's husband's death certificate does not appear to be in any of the papers available to the respondent.
8. At the outset of the hearing before me, it was agreed by Mr Lawson and Mr Rashid that Judge Row only appears to have had a copy of the respondent's bundle comprising of 28 pages that was filed in relation to the second appellant's appeal. Mr Lawson informed me that a separate bundle, comprising of 48 pages, had in fact been filed in relation to the first appellant's appeal. He said that bundle was uploaded to the portal on 19 January 2022 and a copy of the death certificate relating to the death of the first appellant's husband does not feature in that bundle. Mr Lawson provided me and Mr Rashid with a copy of that bundle.
9. For his part, Mr Rashid said the first appellant was unaware of the bundle comprising of 48 pages that had been filed by the respondent separately, and the first appellant did not understand there to be an issue regarding the death of her husband. A copy of the application made by the appellant appears in the 48-page bundle and the appellant clearly states she is a widow. The respondent does not take issue with that in her decision refusing the first appellant's application. Mr Rashid confirmed that his instructions are that a copy of the death certificate was provided when the application was made, together with all the other documents relied upon by the appellants. A copy of the death certificate was provided to me and Mr Lawson by Mr Rashid.
10. Mr Rashid submits that it is now apparent that Judge Row did not have all the relevant documents before him when he reached his decision. There was an additional bundle that had been filed by the respondent that is not referred to by Judge Row and the appellant was entirely unaware that there may be concern as to whether the first appellant is a widow as she has always claimed. Mr Rashid submits that in any event, Judge Row appears to have accepted that the appellant's had been financially dependent on the sponsor since September 2019, but proceeds on the premise that there is a relevant time period during which the appellants must establish they were dependent upon their sponsor. Mr Rashid submits that having concluded that it is possible that the appellants have been financially dependent on their sponsor since September 2019, Judge Row should have allowed the appeal.
11. In reply, Mr Lawson submits Judge Row was simply satisfied that there was evidence of money transfers since 2019, but there was no evidence of the appellants having been dependent upon the sponsor during the ten years between 2009 and 2019. He submits evidence of financial remittances since September 2019 alone was insufficient for the appellants to establish that there is dependence on the sponsor that is genuine. Mr Lawson submits that the failure to have regard to the additional material that was in the respondent's '48-page bundle' filed in

respect of the first appellant's appeal was immaterial. The only additional material in that bundle was a series of Natwest Bank Statements addressed to the sponsor that cover the period 14 August 2020 to 7 December 2020.

### Error of Law

12. Having heard the submissions made by Mr Rashid and Mr Lawson, I informed the parties that I am satisfied that the decision of Judge Row is vitiated by material errors of law and must be set aside. I set out my reasons.
13. It is clear that in reaching his decision Judge Row did not have all of the material documents before him. There were in fact two bundles that had been filed by the respondent. There was a '48-page bundle' filed in response to the first appellant's appeal and a '28-page bundle' filed in response to the second appellant's appeal. Judge Row had before him the latter but not the former. I accept, as Mr Rashid submits, that when the first appellant made her application, she stated she is a widow. Whether or not a copy of her deceased husband's death certificate had been provided in support of the application remains unclear, but the respondent did not suggest in her decision that the first appellant's claim that she is a widow is not accepted.
14. In any event, Judge Row confirms at paragraph [7] of his decision that the appellant relied upon an 'appellant's bundle' comprising of 71 pages. At paragraph [14] of the decision Judge Row confirms evidence of money transfers has been provided. The earliest documentary evidence of a transfer is dated 25 September 2019, with a further three in 2019, four in 2020, and five in 2021. He noted the claim made by the sponsor that he made money transfers to the appellants whilst he lived in Italy, but in the absence of any documentary evidence, he rejected that claim. He rejected the explanation provided by the sponsor for his inability to provide evidence to support his claim.
15. At paragraph [19] of his decision, Judge Row did not make a finding that the appellants have been financially dependent on the sponsor since September 2019. All he said was that he accepts "*..it is possible that the appellants have been financially dependent only since September 2019..*". A judge is required to decide whether the fact to be proved happened or not. Sitting on the fence and accepting that it is possible that something may have happened, does not assist. Taking into account the burden and standard of proof, either the judge accepted the appellants had been financially dependent on the sponsor since September 2019 or he did not. Having reached a finding, it was for the judge to consider all the other evidence before the Tribunal and decide whether the appellants have established there is dependence that is genuine in the sense required under the 2016 Regulations. The difficulty with the decision of Judge Row

is that there was other evidence, at pages 57 to 67 in particular, that relate to the appellants' circumstances in India that Judge Row failed to engage with at all in reaching his decision.

16. The decision of First-tier Tribunal Judge Row is therefore set aside.
17. As to disposal, I had regard to the background that I have set out. I informed the parties that in all the circumstances, having considered paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012, I am satisfied that the Upper Tribunal should proceed to re-make the decision. The standard directions issued to the parties require the parties to prepare on the basis that if there is an error of law in the decision of the First-tier Tribunal, the Upper Tribunal will go on to remake the decision.
18. There has been no further evidence filed by or on behalf of the appellants. Notwithstanding that, Mr Rashid submitted the sponsor would wish to give evidence and requires an interpreter. Enquires were made by my clerk and fortunately a suitable punjabi interpreter was found and was available to attend the hearing.

### **Remaking the decision**

19. Whilst the parties awaited the arrival of the interpreter I was sent an unsigned statement that is said to have been made by the first appellant's sister, Sandeep Kaur. She is the wife of the sponsor and I was informed by Mr Rashid that she will be called to give evidence. Mr Rashid also prepared and provided me with a schedule of the 'money transfers' that are in the evidence before me showing the money transfers made by the sponsor to the first appellant in chronological order.
20. When the hearing recommenced the sponsor Mr Tajinder Singh Heer and the interpreter confirmed that they were able to communicate and understood each other without any difficulty.
21. For the avoidance of doubt the parties agreed that the evidence that I must consider is set out in the following:
  - a. The two bundles filed by the respondent
    - i. The first is a 48-page respondent's bundle filed in respect of the first appellant's appeal.
    - ii. The second is an 88-page respondent's bundle filed in respect of the second appellant's appeal.
  - b. The appellants' bundle comprising of 70 pages.
  - c. Unsigned witness statement of Sandeep Kaur
  - d. The death certificate of the first appellant's husband.

### **The issue**

22. The appellants had applied for an EEA family permit to join their EEA sponsor as the extended family members of an EEA national. The issue in this appeal is whether the appellants are dependent upon the EEA national.

### The Legal Framework

23. The burden rests upon the appellants to establish their entitlement to an EEA family Permit on a balance of probabilities. In reaching my decision I have had careful regard to all the evidence before me, whether it is expressly referred to in this decision or not.
24. In summary, Regulation 8 of the Immigration (European Economic Area) Regulations 2016 requires the appellants to first establish that they are the relatives of an EEA national. Provided, as here, the relationship is established, there are two separate routes to qualification. The appellants must demonstrate they are either: (i) dependent on the EEA national in a country other than the UK, or (ii) a member of the EEA national's household in a country other than the UK. Although 'dependence' and 'membership of the EEA national's household' are alternative routes, there is often likely to be some overlap in the evidence.
25. The entitlement to an EEA family permit only accrues if the appellants are 'dependent' on the union citizen. In Reyes v Migrationsverket (C-423/12), albeit in the context of a 'Family member', the CJEU confirmed that dependency is a question of fact and the dependency must be genuine, but if it is found that the family members essential needs are met by the material support of an EEA national, there is no need to enquire as to the reasons for the dependency and there is no reason to show emotional dependency.
26. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs. Whether the appellants are dependent on the sponsor is therefore a factual question for me to assess on the evidence before the Tribunal.

### The evidence

27. The first appellant's evidence is set out in a witness statement dated 14 February 2022. She claims that until her husband passed away in 2009 she was financially dependent upon him. Since his death, she has been dependent upon her brother-in-law. She claims that initially her brother-in-

law would send money to her sister (his wife), who was residing with her until she left India in 2013. Since then, she claims her brother-in-law sends the money to her directly. She claims she is sent “around £300 every two months or so”. She collect the funds herself. She claims that the sole source of her income is from her brother-in-law and she has no other source of income. She claims without that financial support she would not be able to survive. Her monthly expenditure covers the cost of food, utility bills, internet bill, mobile phone expenses, clothing and medical expenses. She identifies the approximate monthly costs associated with each of those expenses.

28. I make two observations about the first appellant’s witness statement. First, the statement is not certified as having been translated to the appellant in a language that she understands. Second, the date inserted on that statement in manuscript does not appear to be in the same handwriting as the appellant’s signature and has been inserted by someone other than the first appellant. These observations are important because neither the first appellant’s sister nor her sponsor (*i.e. her brother-in-law*) were able to give their evidence to me in English. In fact, when Sandeep Kaur (*the first appellant’s sister*) was called to give evidence, the witness statement that had been prepared by Mr Rashid had to be read to her by the interpreter, before she was able to confirm that its content is true. I do not accept that the appellant’s understanding and grasp of the English language is better than that of her sister and brother-in-law and that impacts upon the weight I am able to attach to the matters set out in her witness statement.
29. Mr Tajinder Singh Heer was called to give evidence. He adopted his witness statement dated 17 February 2020 (*page 10 of the appellant’s bundle*). He confirms the appellant’s husband passed away in 2009 and following his death, he was financially supporting his wife and her sister’s family. His wife joined him in Italy in around 2013. He claims that he sent money to the first appellant and although money was not sent every month, the sum sent would equate to around £150 per month. He claims the first appellant does not have anyone else to financially support her and that without his financial support the appellant would be unable to survive financially. He claims that he is responsible for covering all the appellants’ basic essential needs and has been for a considerable period of time. He claims he did not keep evidence of money transfer receipts from Italy and although he has made requests for that information from Italy, he has been unable to obtain documents to support his claim.
30. In his oral evidence before me Mr Heer maintained that he is the only person that supports the appellants. He said the appellants live in Makhanghar village, in rented accommodation.
31. In cross examination, Mr Heer said that the idea for the appellants to come and live with him and his wife, was a joint decision by him and his wife, because he is the only one providing assistance to the appellants. He said he has been helping the first appellant financially since 2009. His wife

was living with the appellant at that time. The first appellant's father-in-law had passed away before she married her husband and her mother-in-law passed away when the first appellant was engaged. Mr Heer confirmed his wife lived with the appellants until about 2013. Between 2009 and 2013 he sent money to his wife, and the money supported his wife and the appellants. Since 2013, he has been sending money to the first appellant. Mr Heer accepted there is no evidence of money being sent to the appellants from Italy. He said that he did not realise that documentary evidence may be needed and documents were lost when they moved home. Mr Lawson asked Mr Heer why he had sent £1000 to the first appellant in August 2020. Mr Heer claimed that at the time, the second appellant attended a private school and the money was needed to pay school fees and the first appellant needed money to treat her diabetes. Mr Heer accepted there was no evidence regarding the payment of school fees nor to support the claim that the first appellant required medical treatment at the time to treat diabetes.

32. Mr Heer confirmed that his wife and the first appellant have a brother. He claimed that he does not know why the first appellant has fallen out with her brother, because he had married into the family after the rift.
33. To clarify matters, I asked Mr Heer about his wife's and the first appellant's family. He said their father passed away in 2006 and their mother lives with her son, Jaswinder Singh, the first appellant's brother, at an address in Arden Road, Smethwick. He claimed that it has been a long time since there has been contact between the first appellant and her mother. There is the occasional telephone call, but the first appellant's mother is not very mobile. Mr Heer said that the first appellant's mother travelled to India to see the appellants about two or three years ago. She stayed in a house that she owns in her own village, Sarmastpur, a district in Jalandar that is about 50km away from where the appellants live.
34. I asked Mr Heer if he had ever lived at the address in Arden Road, Smethwick, at which his brother-in-law, Jaswinder lives. He said that he didn't think he had lived there, but he had a friend who had also come to the UK and he had lived at the Arden Road address with Jaswinder. I referred Mr Heer to the 'Wester Union' money transfer receipts that show his address to be in Arden Road, Smethwick. Mr Heer confirmed that is the address at which Jaswinder lives, but claimed he had never lived at that address, but had used the address to open a bank account. He maintained he is not on speaking terms with Jaswinder.
35. When pressed about the addresses at which he has resided in the UK Mr Heer claimed that in 2019 he had to return to India following the death of his father. He remained in India for about two months before returning to Italy in May 2019 and then coming to the UK. He said that when he arrived in the UK in 2019 he lived at an address near Church Road for 15 to 20 days. He was joined in the UK by his wife in August 2019 and they lived at an address near Church Road, before moving to the Church Road address at which they continue to live.



36. Mr Heer was asked by Mr Lawson why the appellants are living in rented accommodation if the first appellant's mother owns a property. He said that the property is in fact owned by the first appellant's brother, not her mother. I asked Mr Heer about the family of the first appellant's husband. He said the first appellant's mother and father-in-law have passed away and her husband had a brother who is also deceased. He had no sisters.
37. In re-examination, Mr Heer said that his wife does not speak to her brother. He said that both sisters have a good relationship but neither are on speaking terms with their brother. That has been the position since he married. He confirmed Jaswinder had attended their wedding and suggested that may have been because his father-in-law passed away and he needed to attend as a formality.
38. Mrs Sandeep Kaur was then called to give evidence. Her unsigned witness statement was read to her by the interpreter. She confirmed the content of that statement is true and correct. She claims that since 2013, her husband has been supporting the appellants financially. She states the first appellant has no other financial support whatsoever and does not receive any income from anywhere else. She claims that without the support of her husband and the financial remittances sent, the first appellant would be homeless and would not have any money to survive from. She resides in rented accommodation and her husband pays for that through the money he sends to her sister.
39. In cross-examination, Mrs Kaur confirmed the first appellant's husband passed away in April 2009. She said the cause of death was a heart attack. She confirmed she has a brother but said that after the death of her father, her brother had said that he would only be able to care for his own family. When asked about the reasons for the breakdown in the first appellant's relationship with her brother, Mrs Kaur said that her brother had taken the view that he would not speak to them anymore because they might ask for financial help. She claimed that there has been no contact between the first appellant and her brother and that her brother had simply cut off all ties with the first appellant. When asked whether her husband, the sponsor, was aware of the situation, Mrs Kaur said he is. Mrs Kaur said that her brother does not have any contact with them either. She confirmed her mother lives with Jaswinder. Mr Lawson asked Mrs Kaur whether the family has any property in India. She replied "No". She maintained that her mother does not have any property in India and said that when she married, the property owned by her mother was sold off to Jaswinder. Mrs Kaur said that she last spoke to her brother when the first appellant's husband died in 2009. At the time she was living with the first appellant and their brother had called them to pass on his condolences. She claimed he called from an 'unknown number' and they have no contact details for him. Mr Lawson asked Mrs Kaur whether her mother has visited the appellant's in India. She said "no" and that she did not think her mother has ever returned to India to see the appellants. Mr Lawson pointed out that her husband, Mr Heer had said in evidence that her mother had visited India two or three years ago, and stayed in the

property now owned by Jaswinder. Mrs Kaur maintained that she cannot remember her mother having gone back to India.

40. To clarify matters, I asked Mrs Kaur when she last saw her mother. She claimed it was a long time ago when her brother-in-law was still alive. She thought it was some time between 2007 and 2009. They last spoke when Mrs Kaur was living in India. I asked her why she has not seen or spoken to her mother since 2009. She said that her mother is not able to make calls herself and is dependent on her brother. I asked whether in the past 12 to 13 years, Mrs Kaur has made any attempt to see her mother. Mrs Kaur said that she hears about how her mother is, through a circle of friends.
41. After hearing the evidence, I heard submissions from both Mr Lawson and Mr Rashid. The submissions made are a matter of record and there is nothing to be gained by setting out those submissions in this decision. I have had regard to the submissions in reaching my decision.
42. Mr Rashid adopted the skeleton argument that appears in the appellant's bundle and submits the issue at the heart of this appeal is whether the appellants' essential needs are met by their sponsor. He submits that in addition to the evidence of money sent to the appellants by the sponsor there is evidence of the expenditure incurred by the first appellant, including evidence in the form of receipts for 'electricity' issued by the Punjab State Power Corporation Limited. He submits there is credible evidence of the breakdown of the first appellant's relationship with her brother and why he appellant has been unable to turn to him for any support. In any event, even if the appellant is in contact with and maintains a relationship with her brother, that does not undermine her claim that she is dependent upon her sponsor to meet her essential living needs. He submits the appellant has provided credible evidence as to what she requires and how those needs are met.

### Findings and Conclusions

43. I have had the opportunity of hearing the appellants' sponsor, Mr Heer, and the first appellant's sister, Sandeep Kaur give evidence, and seeing that evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the evidence is received through an interpreter. I acknowledge that there may be a danger of misinterpretation, but I was satisfied that the witnesses understood the questions asked, and the interpreter had a proper opportunity to translate the answers provided by them. In reaching my decision I have been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible. I have considered the claims made by the appellants and their story as a whole, against other familiar factors, such as consistency with what has been said before, and the documents relied upon.
44. It is now well established that if a court or Tribunal concludes that a witness has lied about one matter, it does not follow that he or she has lied

about everything. A witness may lie about some aspects of the claim for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. A person's motives may be different as respects different questions. I have borne that in mind in reaching my decision.

45. The appellants claim they became dependent upon their sponsor following the death of the first appellant's husband. I have been provided with a copy of the death certificate of Mr Baru Atwal Singh, confirming his death on 28 April 2009 in Makhanghar. The copy provided was issued on 20 November 2020, about three months before the appellants made their applications for an EEA Family Permit. The first appellant confirmed in her application that she is a widow. In support of the application, the first appellant also provided an Affidavit (*page 17 of the appellant's bundle*) in which she states she is a widow. The first appellant has also provided a 'Rent Deed' (*page 17 of the appellant's bundle*) in which she is described as the widow of Baru Singh. The evidence of the sponsor and his wife was consistent in this respect and they both maintained the first appellant's husband passed away in 2009. I accept, on balance, that the copy of the death certificate relied upon is genuine and that the first appellant's husband and second appellant's father passed away on 28 April 2009.
46. I have considered the evidence of Mr Heer in particular, regarding the support that he has provided to the appellants. Mr Rashid set out in a schedule the evidence that there is before me of remittances sent to the first appellant. Some of those remittances were sent to the first appellant by Mr Heer, and some by his wife, Sandeep Kaur;

<b>Date</b>	<b>Amount (£)</b>	<b>Amount (INR)</b>	<b>Evidenced</b>
25.09.19	300.00	29336.76	[AB/page 45]
15.11.19	300.00	28673.97	[AB/page 46]
10.12.19	295.10	27463.19	[AB/page 47]
12.02.20	300.00	29002.65	[AB/page 48]
21.08.20	1000.00	97332.94	[AB/page 49]
07.09.20	1000.00	95392.23	Paper Copy
12.11.20	300.00	29275.91	[AB/page 50 ]
13.11.20	300.00	29275.91	[AB/page 51]
08.02.21	400.00	39381.48	[AB/page 55]
09.02.21	400.00	39381.48	[AB/page 56]
08.06.21	300.00	30862.57	[AB/page 52]
06.09.21	300.00	30306.60	[AB/page 53]
14.12.21	200.00	12695.91	[AB/page 54]
28.02.22	200.00	20274.51	New PDF (8)
26.04.22	300.00	29150.19	New PDF (7)
06.07.22	200.00	18933.58	New PDF (6)
30.08.22	250.00	23009.18	New PDF (5)
02.12.22	300.00	29824.69	New PDF (4)
07.02.23	300.00	29727.59	New PDF (3)
18.04.23	300.00	30498.42	New PDF (2)
23.05.23	400.00	41202.26	New PDF (1)

47. I accept there is evidence before me of money transfers to the first appellant. The first in time is evidence of a payment of £300 sent by Mr Heer to the first appellant on 25 September 2019. The address stated for Mr Heer is the Arden Road address at which the first appellant's brother lives, an address at which in his evidence before me, Mr Heer claimed he had never lived. In fact that is the address for Mr Heer set out in several of the money transfer receipts issued by Western Union.
48. I accept there is evidence before me of money being transferred by the sponsor and his wife to the first appellant, but I do not accept that the sponsor and his wife are credible and were honest in their evidence before me about the family dynamics and the reasons for the money transfers. Their evidence before me was vague, internally inconsistent and lacked credibility.
- a. Despite his evidence to the contrary I do not accept the evidence of Mr Heer that he and his wife have never lived at the Arden Road address at which the first appellant's brother lives. If, as Mr Heer claims, they have never lived at that address, there is no credible reason why he should use that address when making money transfers to the first appellant. There is no reason why he would not have given his correct address. I find that Mr Heer and his wife have lived with the first appellant's brother in the past and they have sought to distance themselves from the Arden Road address to support the claim that the first appellant's relationship with her brother has broken down and the first appellant does not receive any support other than support provided by the sponsor.
  - b. The evidence of Mr Heer regarding the appellants ongoing contact with the first appellant's mother (*second appellant's maternal grandmother*) is internally inconsistent. Mr Heer initially said that it has been a long time since the first appellant had any contact with her mother (*who lives with the first appellant's brother*), but then said there is the occasional telephone call. He later accepted the first appellant's mother had travelled to India about two or three years ago to see the appellants, albeit she stayed in a house that he first claimed, she owned. When later asked why the appellants were not living at that property, Mr Heer claimed the property was not owned by the first appellant's mother, but by her brother. The evidence of Mr Heer is at odds with the evidence of his wife, who maintained in her evidence that her mother has not visited the appellants in India.
  - c. Mr Heer claimed he does not know why there is a rift in the relationship between the first appellant and her brother. It is contrary to common sense and human behaviour that despite claiming he has assumed responsibility for meeting the appellants' essential living needs he would not have asked his wife or the first appellant about the first appellant's relationship with her brother. The evidence of Mrs Kaur was at odds with that of her husband, but equally incredible. When asked about the breakdown in the first

appellant's relationship with her brother, Mrs Kaur said that her brother had taken the view that he would not speak to them anymore because they might ask for financial help. When asked whether her husband was aware of the situation, Mrs Kaur said he is. Her evidence that she last spoke to her brother in 2009 when he had called following the death of the first appellant's husband is simply not credible when there is evidence before the Tribunal that her husband used her brother's address when making transfers of money to the first appellant in September 2019, shortly after her arrival in the UK.

- d. The sponsor and his wife live at an address in Church Road Smethwick. The first appellant's mother and brother live at an address in Arden Road, Smethwick. Both addresses share the 'B67' postcode and are in close proximity. It is simply incredible that Mrs Sandeep Kaur last spoke to her mother when she was living in India at a time when her brother-in-law was alive as she claims. Beyond claiming her mother is not able to make calls herself and is dependent on her brother, Mrs Kaur was unable to offer any credible evidence as to why she would not have seen or visited her mother for the past 12 to 13 years despite the fact that they live in close proximity. Her evidence that she only hears about her mother through a circle of friends is simply not credible.
- e. The appellant does not refer to her mother and brother in her witness statement. Neither the sponsor nor his wife were able to offer a credible explanation regarding the breakdown of the first appellant's relationship with her brother. It is not credible that the first appellant's brother would simply have cut off all contact with his sisters following the death of his father, because he had taken the view they might ask for financial help, as Mrs Kaur claimed in her evidence. If there had been such a fundamental breakdown in the two sisters' relationship with their brother, it is curious that when they moved to the UK, the sponsor and his wife chose to live in such close proximity to the first appellant's brother, and that the sponsor used his address when making money transfers.

49. I do not accept the claim made that the first appellant's brother has no or little contact with the appellants and that the sponsor and his wife are the only people that provide financial and other support to the appellants. On balance I find, it is likely that the first appellant's brother and mother also provide support, and that I have not been told the truth about the support provided to the appellants from other members of the family.

50. In the absence of any evidence at all to support the claim made by the sponsor that he sent money to the first appellant whilst he was living in Italy, I do not accept his evidence that he provided financial support to the appellants between 2013 and 2019. There is a lack of supporting evidence. Any payments sent between 2009 and 2013, when his wife was living in India, are, on balance, likely to have been payments sent to support his wife. Even if he had not retained evidence of payments made

as far back as 2013, there is no reason why he should not have been able to produce at least some evidence of payments sent in 2018/19. There is a stark lack of any evidence beyond his own assertions to support his claim. Without any evidence to support his claims, I do not accept his evidence.

51. In any event, as I have said there is evidence before me that the sponsor has sent money to the first appellants since 2019. However, the simple fact that money has been sent to the appellants is not on its own enough. As is now clear from the authorities, it is not enough simply to show that some financial support is in fact provided by the EU citizen. The family member(s) must need the support in order to meet his or her basic needs, or put another way, their essential living costs.
52. The evidence before me is limited. There is no evidence of the payment of water charges as set out in the Rent Deed. The appellant claims in her witness statement that the monthly expenditure that she needs to cover is her food expenses, utility bills, internet bill, mobile phone expenses, clothing and medical evidence (if required). I have considered the evidence relied upon by the first appellant to support her account that her essential needs are met by the money provided by the sponsor. I note:
  - a. The appellant has provided receipts from the 'Punjab State Power Corporation Ltd' (*pages 57 to 60 of the appellant's bundle*). The consumer name shown on those receipts is "Surinder Singh and Parmjit Kaur".
  - b. The 'Rent Deed' relied upon by the appellant (*pages 66 to 67 of the appellant's bundle*) states Surinder Kaur and Paramjeet Singh are the landlords. The tenancy is said to be for a fixed period from 01-01-2020 to 31-12-22 at a monthly rent of 1,500 Rupees, excluding electricity charges, and water charges. The rent deed states, "*That all electricity bill of the said premises shall also be paid by the tenant directly to the department concerned in time and on due dates...*".
  - c. There are receipts (*pages 61 to 65 of the appellant's bundle*) addressed to the first appellant for general food items issued by Pawan Karyana Store dated 3 October 2021, 5 November 2021, 8 December 2021, 2 January 2022, and 2 February 2022.
53. Although the first appellant has provided the 'Rent Deed', there is no evidence before me of the payment of the rent due. No receipts appear to have been provided by the landlords.
54. The first appellant offers no explanation as to why the consumer identified in the 'electricity receipts' appears to be the landlord whereas the Rent Deed requires the electricity bill to be paid by the first appellant. I am prepared to give the appellants the benefit of the doubt and accept the submission made by Mr Rashid that given the description of the property and the wording of the 'rent deed', it is possible that the bill is

directed to the landlord, but responsibility for payment rests with the first appellant.

55. There is no evidence of any other utility bills and how payment is met. There is equally no evidence to support the first appellants claims that the money received from the sponsor is used to meet the costs of internet bills, mobile phone expenses, clothing and medical expenses. I accept that in a cash economy such as that operated in rural India, there will often be an absence of evidence to support expenditure such as the cost of everyday transport, groceries, clothing and medical costs. However there is an absence of credible evidence to support the claim made by the appellants that their essential living costs are met by the monies sent to them by the sponsor.
56. The payments sent to the first appellant by the sponsor and his wife are irregular and that is not in itself surprising. However it is impossible to reconcile the limited evidence relating to the first appellant's expenditure with the sums sent to her. For example, on 28 August 2020, the appellant was sent a sum of £1000. The evidence of Mr Heer was that he provided £1000 to the first appellant in August 2020 to meet the cost of school fees and medical treatment required by the first appellant. Quite apart from the fact that the appellant does not refer to her requiring money for school fees, if such a large sum was required to meet the second appellant school fees it is surprising that there is no evidence before me of the payment of school fees, either in or about August 2020 or any other time. Furthermore there is no evidence of the first appellant having incurred any medical expenses at or around that time. Mr Heer's evidence that the first appellant needed to obtain medication to treat her diabetes is at odds with the evidence set out in paragraph 7 of the first appellant's witness statement in which she confirms that medical expenses are rare. She claims to suffer from high blood pressure and states she is not on any regular medication. There is no reference in her evidence to her incurring any medical costs for treatment of diabetes.
57. I accept the appellants derive some benefit from the money sent by the sponsor and his wife to the first appellant. It is not unusual for members of a family to send money to their family abroad, sometimes at regular intervals. That can be for a variety of reasons, including, as the appellants claim here, to meet their essential living needs. Monies can however also be sent to make the lives of other family members abroad a little more comfortable, or in some cases to give the impression of dependency.
58. I accept the appellants do not need to be solely financially dependent on their EEA Sponsor and even if the appellants were paying for some of their living costs from other sources, that does not mean the appellants are not receiving financial support for their essential needs. However, even taking a holistic view of the evidence before me, there is a lack of credible evidence to establish that it is the EEA Sponsor who is responsible for the essential living expenses of the appellants.

59. I find it is more likely than not, that Mr Heer has sent money to the first appellant since his arrival in the UK in 2019. However, on the evidence before me, the appellants have failed to establish that they are in receipt of financial support, either directly and indirectly through the provision of accommodation, education, utilities, food, clothing, medication and so on, for their basic needs. There is very little evidence of the emotional needs of the appellants or as to their circumstances in India. The focus of the evidence before me is squarely upon the money sent to the appellants by the sponsor and his wife, and not upon any other support that the appellants require or are provided with in the wider sense. Considering the evidence as a whole I find that the appellants have not established, on the balance of probabilities, that they are dependent extended family members of the EEA Sponsor as defined in Regulation 8 of the 2016 EEA Regulations.
60. It follows that I dismiss the appeal.

**NOTICE OF DECISION**

61. The appellants appeal against the decision of First-tier Tribunal Judge Row is allowed and the decision of First-tier Tribunal Judge Row is set aside.
62. I remake the decision and dismiss the appeal.

**V. Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

9 November 2023