



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/22830/2014

THE IMMIGRATION ACTS

Heard at Field House
On 4 November 2014

Decision & Reasons Promulgated
On 3 December 2014

Before

THE HONOURABLE MRS JUSTICE ANDREWS DBE
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

EDMUR ALBERTO SALDANHA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination by the First-tier Tribunal (Judge Kempton) that was promulgated on 4 August 2014, but did not actually reach the appellant

until 7 August. That determination was made on the papers at the appellant's own request. His appeal to the First-tier Tribunal was dismissed.

2. The appellant was appealing against the refusal by the respondent to grant him a residence card as the family member of an EEA national, namely his daughter, who is of Portuguese nationality and exercising her Treaty rights to work in the UK. The Home Office letter refusing the application had set out in some detail what was required to be shown under Regulation 71C of the Immigration (European Economic Area) Regulations 2006. The appellant was told that the regulation required dependent direct relatives in the ascending line (i.e. parents) to provide evidence of dependency on the sponsor in the UK either in the form of financial dependency or joint residency. His application failed because he had failed to provide such evidence (under either limb), and in particular because the Home Office had seen no evidence of his residency other than a bare assertion by him that he had lived in the UK for over five years, having entered clandestinely in 2008. Although he had submitted originals and copies of bank statements for his daughter in support of his application, it was said that they did not evidence his ability to have access to funds.
3. The First-tier Tribunal came to exactly the same conclusion as the respondent that there was insufficient evidence of dependency. We are satisfied that the Tribunal adequately explained why that decision was reached, and why it was that the various documents that were submitted by the appellant did not suffice[9-12].
4. Permission to appeal was granted on the basis that it was arguable that the Tribunal did not sufficiently consider the question of dependency as from August 2013. August 2013 is a key date, because although the evidence as to the sponsor's financial resources prior to that date tended to suggest she could not have afforded to give financial support to her father, in August 2013 she took up a new job which, on the face of it, suggested that she might at least have been able to afford to do so in future.
5. The documentary evidence before the Tribunal showed that the sponsor was offered a position as a PA and administrative assistant with an organisation called Management To Learn Ltd at a salary of £25,000 per annum with a starting date of 1 August 2013, and that she had accepted that job. There were also copies of her bank statements from Barclays Bank which showed that her new employers were paying her salary regularly into her bank account, at least as from October 2013[9-10].
6. The same bank statements showed that there were two payments made to her father in the course of December 2013 from the same bank account, and that there were other payments made to him from the account in January 2014. They are not insignificant sums of money, but the duration of the payments and the amounts that were paid, in and of themselves, fall a long way short of showing that he was financially dependent upon her.
7. There is nothing in the Regulation to indicate how long a period of financial dependency has to be shown by an applicant, and in particular whether that period should coincide with the period that the applicant (or the sponsor) has been within

the jurisdiction. However, even if financial dependency for the purposes of the Regulation can be over a relatively short period, and even if it can relate to a time which is (a) shorter than the period the applicant has been within the jurisdiction and (b) shorter than the time that the sponsor has been exercising his or her Treaty rights in the UK, it is clear that something more than some isolated payments made by the sponsor to the applicant is required.

8. Whilst the Tribunal did not specifically make findings that the evidence of the isolated payments made to the appellant by his daughter in December 2013 and January 2014 was insufficient to satisfy the requirements of the regulation, we find no material error of law in this regard.
9. There was no evidence before the Tribunal as to how the appellant managed before he was getting those payments. There is no documentary evidence of his receiving any payments from his daughter before she took on the new job, and as we have already stated, such evidence as there was suggested that there was insufficient money coming in from her previous employment to enable her to pay for his upkeep as well as her own.
10. The Tribunal found that there was no evidence to show that the appellant actually lived with his daughter. [10] It found that the evidence of an invoice for a firm of solicitors, a letter from Virgin Media and telephone bills was inadequate to establish that he lives in the same house as his daughter. The appellant adduced a witness statement from his daughter but what the Tribunal found lacking was any independent evidence of the social and financial circumstances beyond the bank statements [12].
11. All the evidence was scrutinised very carefully by the First-tier Tribunal. There was no obligation on the Tribunal to accept bare assertions of dependency made in the witness statements.
12. In short, although there was an argument that the First-tier Tribunal failed to make findings in relation to the period after the appellant's daughter took on the new job which gave her more money than she had previously earned, and thus potentially gave her the means to provide some financial assistance to her father, in our judgment it is impossible to argue that the decision was irrational or inadequately reasoned on that ground. Even if the Tribunal had specifically addressed the position after August 2013, instead of looking at the totality of the evidence, it would have made no difference to the outcome of the determination.
13. The judge giving permission to appeal also said there was an arguable case that the First-tier Tribunal reached an irrational or inadequately reasoned finding that there was no evidence to show that he resided with his daughter and in concluding that Article 8 was not engaged. We respectfully disagree. The evidence in relation to where the appellant was living at any given time was thin in the extreme, and there certainly was insufficient evidence for the Tribunal to conclude that he was living at the same address as his daughter either before or after August 2013. There is no error

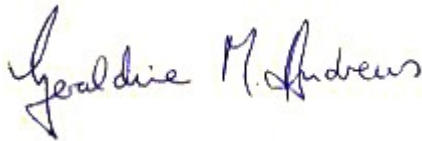
in the reasoning or the clarity of the finding that was made in that regard. It was a finding that was plainly open to the Tribunal.

14. To the extent that this ground is pursued on appeal, we find that there is no substance in it.
15. However, the main point taken by the appellant is that there was an insufficient consideration of the question of financial dependency. So far as that is concerned we consider that the evidence before the First-tier Tribunal fell a long way short of showing financial dependency either before or after August 2013. The Tribunal did give the matter of dependency adequate consideration and was entitled to reach the decision that it did on the evidence before it.

Decision

16. There was no material error of law in that determination on any of the grounds for which permission to appeal was granted. For those reasons we dismiss this appeal.

No anonymity direction is made.



Signed

Date 6 November 2014

Mrs Justice Andrews

TO THE RESPONDENT

We have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Mrs Justice Andrews