



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/37153/2013

THE IMMIGRATION ACTS

Heard at Field House
On 29 July 2014

Determination Promulgated
On 31 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

AWAIS MIAN ZAHID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iqbal (Counsel)

For the Respondent: Mr Whitwell (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. He has appealed against a decision dated 27 August 2013 to refuse to issue him an EEA residence card.

Procedural history

2. In a determination promulgated on 7 May 2014 First-tier Tribunal Judge Napthine dismissed his appeal, having allowed the appeals

of his mother and two siblings against similar decisions to refuse an EEA family residence card. The Judge based this on the fact that this appellant was an independent adult over the age of 21 (in contrast to his two siblings).

3. When granting permission to appeal Judge Page observed that at the date of the application the appellant was under the age of 21 and it was therefore arguably an error of law for the Judge to dismiss the appellant's appeal for the reasons provided.
4. The matter now comes before me to decide whether the determination contains an error of law, and if so to re-make the decision.

Error of law

5. Both parties accepted and it was not disputed that (i) the appellant was born on 23 September 1992; (ii) that means that when he made his application on 21 November 2012, he had recently turned 20; (iii) at the date of decision on 27 August 2013, the appellant was still 20.
6. The Judge correctly considered the appellant's date of birth (para 2) but in my judgment erred in law in so far as he considered his age as at the date of hearing (para 30) rather than at the date of application. The Judge may have been wrongly distracted by the decision letter in which the respondent erroneously stated that at the time of the application the appellant was 21 years old, when he was clearly still 20.
7. Mr Whitwell submitted that the Judge was entitled to consider the appellant's age as at the date of hearing. Mr Iqbal argued that this was inconsistent with the approach under the Immigration Rules and there was no justification in distinguishing between the two classes of cases. Neither representative was able to assist with any authority on the point.
8. In my judgment the Judge has made an error of law in failing to direct himself to the appellant's age at the date of his application. I have not been provided with any authority, policy or instruction to assist me on this point. In the absence of this it is helpful to consider the approach under domestic law. Mr Whitwell accepted that the appropriate date to consider the age of the child for the purposes of the Immigration Rules is the date of the application. This is to avoid any prejudice that might occur by reason of delays in the decision-making and appeal processes. Similar considerations apply with equal force here. Indeed the

respondent's decision letter in this case appears to accept that the date of the application was the correct point at which to consider the age of children applicants.

Re-making the decision

9. It follows that the appellant's appeal should be remade. The Judge was prepared to accept that the appellant's siblings' (both under 21) appeals should be allowed to the extent that they be granted residence cards. For the reasons outlined by the Judge in relation to those appellants, it must follow that this appellant's appeal must also be allowed as he was under 21 at the date of the application.

Decision

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
11. I set aside the decision.
12. I re-make the decision by allowing the appellant's appeal to the extent that he be granted a residence card, in line with his family members.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date:
30 July 2014