



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/11488/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 3rd July 2014**

**Determination Promulgated
On 14th July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MISS AMANDEEP KAUR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Rutherford instructed by J M Wilson Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of India born on 28th September 1987. Her application for an EEA family permit as a dependent family member of an EEA national exercising treaty rights in the United Kingdom was refused by the Respondent on 3rd May 2013. Her appeal against that refusal was allowed under the Immigration (European Economic Area) Regulations 2006 by Judge of the First-tier Tribunal Chohan on 19th February 2014.

2. The Respondent's reasons for refusal of entry clearance refer to a supporting statement submitted by the Appellant with her application. In this she stated that her studies finished in 2006 and that her mother and stepfather had been supporting her financially since then. However, she also stated that her mother met her stepfather in 2009 when she travelled to the UK as a visitor; she remained in the UK and subsequently married the Appellant's stepfather in April 2010. The Appellant stated that she had not worked since finishing her studies in 2006. It was therefore evident that she was somehow supported from 2006 until 2009/10 without the financial support of her stepfather. The Respondent doubted that the Appellant was financially dependent upon her stepfather.
3. It was further noted that the Appellant was previously issued with visit visas in 2008 and 2009. The Appellant was interviewed in connection with one of those applications in the course of which she stated that her family received income from agriculture and dairy farming. She further mentioned that her brother worked on the family's land which led the Respondent to believe that income was still being generated. This caused the Respondent to doubt that she was financially dependent upon her stepfather. Furthermore, she was able to be supported for three separate visits to the UK during a period of little over a year at a time when her mother had not even met her stepfather. In the circumstances, the Respondent was not satisfied that she was financially dependent on her stepfather as claimed.
4. The First-tier Judge was satisfied on the evidence before him that the Appellant was dependent on her stepfather, an EEA national, who was exercising treaty rights in the UK. Accordingly, the judge concluded that the Appellant met the requirements of Regulation 7.
5. Grounds submitted by the Respondent's representative in support of an application for permission to appeal argued as follows:
 - (a) An alleged failure on the part of the First-tier Judge to recognise that the Appellant would only meet the relevant dependency tests if it could be shown that the money being sent to her by the EEA national concerned was enabling her to meet her "essential needs"; and
 - (b) an alleged failure on the First-tier Judge's part to make relevant findings as to what the Appellant's essential needs are and the extent to which, among other things, the Appellant is receiving financial support from other sources.
6. Permission to appeal was granted in the First-tier Tribunal on 6th March 2014.
7. A Rule 24 response was submitted which, in summary, argued that the First-tier Judge had properly directed himself and had made adequate findings based on the evidence.
8. In oral submissions Mr McVeety relied upon the grounds submitted in support of the permission application. He also relied upon the decision of the ECJ in Jia [2006] EU ECJ C-1/05 and the decision of the Upper Tribunal in Moneke (EEA – OFMs) Nigeria [2011] UKUT 000341 (IAC). Mr McVeety referred in particular to paragraph 41 of Moneke which states that dependency is not the same as mere receipt of some financial assistance from the Sponsor. The definition of dependency as set out in the

current UKBA ECIs is then set out which states that financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/her spouse/civil partner in order to meet his/her **essential needs** – not in order to have a certain level of income. At paragraph 99 of Jia the court stated –

“Article 1(d) of Directive 73/148/EEC is to be interpreted as meaning that the concept ‘dependence’ refers to the situation in which a relative of a citizen of the Union is economically dependent on that citizen of the Union to attain the minimum level of subsistence in the country where he is normally resident, not being the member state where he is seeking to reside, and that this situation is structural in character”.

9. Mr McVeety added that expenses do not equate to essential needs. The Tribunal has to ascertain if the financial assistance in question has been for the purpose of essential needs. Mr McVeety submitted that the First-tier Judge had failed to make a finding on this core issue.
10. For the Appellant, Miss Rutherford relied upon the Rule 24 response which had been drafted by Counsel who had represented the Appellant before the First-tier Tribunal. She submitted that, when read as a whole, the First-tier Judge’s determination disclosed no error of law. Miss Rutherford submitted that the First-tier Judge had properly directed himself at paragraph 8 of the determination.
11. I concluded that Mr McVeety’s submission was well-founded and was supported by the case law to which he had referred. I am satisfied that the First-tier Judge failed to make a finding on a core issue and such failure amounts to a material error of law.
12. Both parties invited me to remit the matter to the First-tier Tribunal for rehearing. Having regard to the error of law which had been found to exist, it was not appropriate to preserve any findings. Having reminded myself of paragraph 7.2 of the Upper Tribunal Practice Statements I agreed with the representatives and directed that the matter should be remitted to the First-tier Tribunal to be heard afresh.

DIRECTIONS

1. This appeal is remitted to the First-tier Tribunal for a fresh hearing before a First-tier Judge other than Judge Chohan.
2. No interpreter shall be provided unless one is specifically requested by the Appellant’s representatives. In this event the language and dialect shall be specified.
3. The appeal shall be heard at Sheldon Court, Birmingham which is where the original hearing before the First-tier Tribunal took place.

No anonymity direction is made.

Signed

Date 14th July 2014

Deputy Upper Tribunal Judge Coates