IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/05892/2014
IA/05896/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29th April 2015	**On 18th May 2015**

Before

THE HONOURABLE MRS JUSTICE MCGOWAN
UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ADRIAN NARVAS
MARNILLE ESMORES QUINTO
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms L Appiah, instructed by Vine Court Chambers
For the Respondent: Mr C Avery, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, Adrian Narvas and Marnille Esmores Quinto, are citizens of the Philippines. The first appellant is the partner of the second appellant. Both appellants made applications for residence cards as the extended family members of an EEA national (Ms Brillantes-Reed, a Spanish citizen, the second appellant's aunt). Their applications were refused by the

respondent on 13 February 2014. The appellants appealed to the First-tier Tribunal (Judge Beach) which, in a determination promulgated on 6 January 2015, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The applications for residence cards fell to be considered under paragraph 8(2) of the Immigration (European Economic Area) (Amendment) Regulations 2011:

> **"Extended family member"**
>
> **8.**—(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).
>
> (2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—
>
> (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
>
> (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
>
> (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

3. The operation of the scheme contained in paragraph 8(2) is helpfully summarised in the headnote of the Upper Tribunal decision *Dauhoo (EEA Regulations - reg 8(2))* [2012] UKUT 79 (IAC):

> "Under the scheme set out in reg 8 (2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an "extended family member" in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK:
>
> i. prior dependency and present dependency
>
> ii. prior membership of a household and present membership of a household
>
> iii. prior dependency and present membership of a household;
>
> iv. prior membership of a household and present dependency.
>
> 11. It is not necessary, therefore, to show prior and present connection in the same capacity: i.e. dependency- dependency or household membership-household membership ((i) or (ii) above). A person may also qualify if able to show (iii) or (iv)."

4. Judge Beach at [35] – [42] considered "prior dependency" and "present membership of a household" both in the Philippines and in the United Kingdom. She concluded that the second appellant had not enjoyed prior membership of her aunt's household in the Philippines [35] nor had she been dependent on her aunt in the Philippines prior to coming to the

United Kingdom [36]. She found that there was "insufficient evidence" to prove that the second appellant is dependent upon her aunt in the United Kingdom [41] although she did accept [42] that both appellants are members of the aunt's household in the United Kingdom. As a consequence of these findings, Judge Beach dismissed the appeal.

5. Ms Appiah, for the appellants, submitted that the judge had erred in law by concluding that the second appellant had not been a member of the household of her aunt in the Philippines. In the alternative, Ms Appiah submitted that the judge should have found that the second appellant had been dependent on the aunt whilst living in the Philippines. A positive finding in respect of those issues, together with the judge's finding that the appellants are currently members of the same household in the United Kingdom as the aunt, should have led the judge to allow the appeal.

6. At [35], Judge Beach wrote:

> "The second appellant's account is that she lived with her great-aunt (her aunt's mother) in the Philippines and that this was the family home. However, by the second appellant's own account, her aunt only came to the family home for vacations. The second appellant had not lived with her aunt in the Philippines since she was a young girl and she, her siblings and her parents had subsequently moved out of the property before she moved back to care for the paternal great-aunt. The second appellant's aunt moved to the UK in 2003 and has formed her life in the UK including founding a business. I find that the second appellant's aunt cannot be considered to be part of the household in the Philippines. I further find that the circumstances are such that the second appellant cannot be considered to be a member of the sponsor's household in the Philippines because the sponsor no longer has a household in the Philippines and has lived in the UK for seven years prior to the second appellant arriving in the UK."

7. We consider that the judge has reached a finding on "prior membership of the sponsor's household" which was plainly available to her on the evidence. It is clear that the household in the Philippines in which the second appellant lived was not that of her aunt (on whose EEA status her application for a residence card is based) but rather that of her great-aunt (her aunt's mother). Significantly, paragraph 8(2) requires an "extended family member" to have been a member of the EEA national's household; the provision does not extend to applicants who may, together with an EEA national, have both been members of the household of a non-EEA national. Mr Avery, for the respondent, relied on the Court of Appeal judgment in *AA (Algeria)* [2014] EWCA Civ 1741, in particular at [32] – [33]:

> "Mr F Alem was born in 1983, so he left Algeria when he was 18 or 19 years old. Prior to that, all four brothers had been living in Algeria with their father and mother. It is unnecessary to decide whether that household in Algeria was the father's or the mother's or both parents' household. What is clear is that it was not Mr F Alem's household.
>
> Regulation 8(2) requires the extended family member to have been dependent on the EEA national (or his spouse if we had accepted Miss

> Anifowoshe's submissions) or a member of his household. Similarly, Article 3.2 would refer to the Union citizen (or his spouse if we had accepted Miss Anifowoshe's submission)."

8. There is nothing in the Regulations to indicate that an individual may only have one household at one time but it is clear from the facts in the instant case that when the second appellant's aunt returns to the Philippines for holidays she does not live in her own household but that of her mother. Judge Beach was, therefore, unarguably correct to find that "the sponsor no longer has a household in the Philippines". More importantly, the aunt/sponsor did not have a household in the Philippines at the time when the second appellant was living in that country. The aunt and the second appellant may have lived together in the household of the great aunt but that is not sufficient to satisfy the requirements of paragraph 8(2).

9. It was the second appellant's evidence that her aunt had provided financial support to her in the Philippines via the great-aunt and, as Judge Beach noted, there were a number of "financial remittance slips" covering the period 1 January 2004 to 5 November 2014. The transfers had been sent directly to the great-aunt. The judge noted that,

> "… apart from these money transfer receipts and the second appellant's oral evidence, there is no other evidence to support her contention that these money remittances were for her use too or even that she was living at the great-aunt's address."

The judge went on to record that she had "real concerns" regarding the lack of evidence to support the second appellant's assertion that she had been dependent upon her aunt in the Philippines. The judge concluded at [37] that there was "insufficient evidence of the second appellant being dependent on her aunt while she was living in the Philippines".

10. Ms Appiah submitted that the judge had failed to indicate the weight, if any, she had attached to the second appellant's evidence and why she had regarded that evidence insufficient to discharge the burden of proof. We reject that submission. In our opinion, it is entirely clear from the determination (in particular, the passage which we have quoted above from [36]) that, whilst the documentary evidence showed payments to the great-aunt, the judge found that the second appellant's own assertion that the money had been paid for her benefit was inadequate to discharge the burden of proof. The judge's findings at [36] should be read in the light of the concerns which she had expressed at [33] – [34] that the second appellant's aunt had not attended the First-tier Tribunal hearing and had not even submitted a written statement in support of the second appellant's appeal. The judge noted that:

> "… the aunt failing to attend the hearing [has made it] difficult for me to assess her support of the appellants' applications. It also impacts potentially on the credibility of the evidence given that the sponsor in the application did not attend despite knowing the reasons for the refusal."

The appellants had not applied for an adjournment to enable the aunt to attend whilst the reasons given for her absence were, in the opinion of the judge, unsatisfactory [34]. Against this background, we consider that there was no reason for the judge to state explicitly that the second appellant's evidence was insufficient to discharge the burden of proof in these circumstances; the determination, read as a whole, provides adequate reasoning to support her findings. We find that the grounds of appeal challenging the determination at [36] amount to little more than a disagreement with findings which have been supported by adequate and clear reasoning.

11. We find that the judge did not err in law in concluding that the appellants had failed to prove both prior dependency upon an EEA national or prior membership of that EEA national's household in the Philippines. The judge was, as a consequence, right to find that the appellants did not meet the requirements of paragraph 8(2) of the 2006 Regulations.

DECISION

12. These appeals are dismissed.

Signed Date 5 May 2015

Upper Tribunal Judge Clive Lane