



IAC-AH-DN-V1

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

Appeal Number: OA/03708/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29th May 2015**

**Decision & Reasons Promulgated
On 15th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS SATYA DEVI CHUMBER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: No legal representation

For the Respondent: Miss A Brocklesby-Weller (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Fowell, promulgated on 11th February 2015, following a hearing at Newport on 9th February 2015. In the determination, the judge allowed the appeal of Mrs Satya Devi Chumber. The Respondent Entry Clearance Officer, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of India, is a female, and was born on 13th April 1939. She is 75 years of age. On 10th January 2014, she applied for entry clearance from India under European Community law, as the family member of an EEA national, her daughter-in-law, Mrs Zaneta Hulisz, who is a Polish national. That application was rejected on 12th February 2014 on the basis that the documentary evidence was limited, the entire financial picture was unclear, and that, all the money was being sent by the son of the Appellant, Mr Jasvir Chumber, and his wife, Mrs Zaneta Hulisz, who is also a Sponsor, it was unclear how this money was being sent, given that the Appellant also had five daughters living in India who were in a position to support her. The Appellant submitted her appeal on 10th March 2014 under Regulation 26 of the Immigration (European Economic Area) Regulations 2006.

The Judge's Findings

3. In what is a careful, comprehensive, and detailed determination, the judge set out the issues, the evidence before him, the reasons for refusal by the Respondent, and the applicable law in this complex area of jurisdiction. The judge also heard evidence from the Appellant's son, Mr Jasvir Chumber, and her daughter-in-law, Mrs Zaneta Hulisz. The evidence was that Mr Chumber had been sending money via Western Union, every month, or a month and a half, for £200 or £300, and that there was also a 20,000 rupee deposit on 18th June 2013. The evidence also was that given that the fifth sister of the son in the UK, was also now married, "There is no-one to care for his mother in India. They go to her home to visit but they do not have enough money to give her any" (see paragraph 9(h)).
4. As against that, the judge heard the Respondent's submissions that the Appellant had to show that at the time of the decision she was financially dependent on her sponsoring children in the UK. The remittance slips do not show how the money was being spent (see paragraph 11).
5. The judge thereafter went on to set out the law in relation to dependency. In particular, after referring to Jia (at paragraph 15), the judge went on to deal with Moneke (paragraph 16), which confirmed that,

"It does not matter that the applicant may in addition seek financial support/income from other sources. There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment ..." (see paragraph 16 of the determination).
6. The Tribunal in Moneke had also stated (at paragraph 42) that, "An able bodied person who chooses to rely for his essential needs on material support of the Sponsor may be entitled to do so even if he could meet those needs from his or her economic activity" (see paragraph 17 of the determination).
7. After reciting further case law (see paragraphs 18 to 19), the judge dealt with the latest case of Reyes (from January 2014), which held that "The fact that a Union

citizen regularly and for a significant period paid a sum of money to a descendant necessary in order to support her in the country of origin was enough to prove that the descendant was in a real situation of dependence" (see paragraph 20 of the determination).

8. Finally, after setting out in detail the Western Union money transfers, of which the judge had sight, he set out the trail of remittances of anything between £250 to over £300 (see paragraph 24). The judge then concluded that, "This is evidence of regular support, amounting to about £2,000 over the course of a year" (paragraph 26). As to how this money was being spent, the judge referred to the evidence already given by the two Sponsors before him and he held that, "I found them to be sincere and consistent. Neither said more than they knew or attempted to embellish matters" (paragraph 27). Whilst the judge was concerned of the "lack of earlier evidence of payments" (paragraph 29) he found himself able to conclude that the Appellant had been able to demonstrate, on a balance of probabilities, that there was a dependency of necessity here.
9. The appeal was allowed.

Grounds of Application

10. The grounds of application state that the judge failed to have regard to the case of **(EEA – OFMs) Nigeria [2011] UKUT 00341 (IAC)** with regard as to how the money being remitted from the UK was being spent by the Appellant mother in order to establish if some, or all of it, is required for essential living needs.
11. Permission to appeal was subsequently given by the First-tier Tribunal.

Submissions

12. At the hearing before me on 29th May 2015, Miss Brocklesby-Weller, appearing on behalf of the Respondent, submitted that there was only a very discrete point involved in this appeal. Although a number of authorities had been cited by the judge, the crucial question was not grasped by the judge, namely, as to how the money being remitted from the UK was spent by the Appellant. It was not clear whether the remittances were directly related to the meeting of essential needs. The judge had failed to make a finding of fact in relation to this.
13. Second, the issue was important given that the Appellant had been living in her own home for 41 years and there was no evidence of any particular needs that had risen in these years that had to be met by the children of the Appellant, and certainly not by the sponsoring daughter-in-law from the UK.
14. Third, the judge was suitably concerned about the "lack of evidence" going back to the time when the first application had been made to sponsor the Appellant to come to the UK as a dependant. It was, accordingly, necessary for the judge to take a holistic approach.

15. For his part, Mr Jasvir Chumber, being legally unrepresented, simply repeated what he had said before the judge below, namely, that he had routinely been sending, together with his wife, anything between £200 to £300 for his mother's regular needs, and these had been specifically referred to by the judge in the determination, before he concluded that the appeal should be allowed.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2011) such that I should set aside this decision. My reasons are as follows.
17. First, the decision of the judge is entirely in accordance with the law as set out in the determination. The latest case of **Reyes** (referred to at paragraph 20 of the determination), makes it clear that if "a Union citizen regularly and for a significant period" sends money, then this is enough to prove that the descendant was in a real situation of dependence.
18. Second, the suggestion that the requirement of **(EEA - OFMs) Nigeria [2011] UKUT 00341 (IAC)**, is not met because the judge has not been able to explain how the monies remitted is being spent, is unsustainable. This is because, upon considering the evidence, the judge made a clear finding of fact that, "The Appellant's bank balance does not show any other sources of income, and the reserve it contains is of the size required for an air fare to the UK" (paragraph 28).
19. What this means, and this is a finding of the judge, is that whatever small amount of help that the other relatives in India give, the essential needs of the Appellant are met really on the basis of the remittances sent from the UK by her son and daughter-in-law. This was a finding that the judge was entirely entitled to make. The appeal by the Respondent amounts to nothing more than a disagreement with the findings of the judge.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th June 2015