



IAC-FH-CK-V1

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

Appeal Number: IA/02117/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 January 2016**

**Decision & Reasons Promulgated
On 27 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MR ZOHAIB KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Heybrook, Counsel, instructed by Morgan Mark Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Abebrese (hereafter, the judge), promulgated on 26 March 2015, in which he dismissed the Appellant's appeal against the Respondent's decision of 19 December 2013, refusing to issue a residence card as the extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2006 (hereafter, the Regulations).

2. The EEA national in question was and is a Portuguese citizen. He is the Appellant's uncle (hereafter, the sponsor).

The hearing before the judge

3. Before the judge, the Appellant, the sponsor, the sponsor's wife and the Appellant's aunt all gave oral evidence. The judge directed himself to the case of Dauhoo [2012] UKUT 79 (IAC). At paragraph 13 the judge did not accept that the Appellant had shown that he had been dependent upon the sponsor whilst still in Pakistan. This finding was based essentially on the apparent fact that the Appellant had not mentioned the sponsor or his dependency thereon in his student application for entry clearance made back in 2010.
4. At paragraph 14 the judge employed the same reasoning to reject the evidence of the other witnesses, and in addition stated that it was not apparently credible that the Appellant's own parents had not been able to provide for him whilst he was in Pakistan. The judge did accept that the Appellant was presently dependent upon the sponsor.
5. In light of the above, the judge dismissed the appeal under the Regulations. He did go on to consider the claim under Article 8 but in light of more recent case-law on this issue that is not a relevant matter before me now.

The grounds of appeal and grant of permission

6. The grounds of appeal asserted that the judge had in effect failed to give any or any adequate reasons for his findings on the core issue in the appeal before him. Permission was granted in very clear terms by First-tier Tribunal Judge Landes on 6 October 2015.

The hearing before me

7. At the outset of the hearing I indicated to Mr Avery that my preliminary view in this case was that there were material errors of law in the judge's decision. In fairness to Mr Avery he did not seek to argue to the contrary.
8. In the event I did not feel it necessary to call upon Miss Heybrook to make any submissions.

Decision on error of law

9. In my view there are clear errors of law in the judge's decision, as asserted in the grounds of appeal, and as are readily apparent from paragraphs 13 and 14 of the decision.
10. There are no, or certainly no adequate, reasons given by the judge as to why the Appellant could or should have mentioned the sponsor and dependency thereon in the Tier 4 Student application made in 2010. It appears to me from the papers that the 2010 application was not even in

evidence before the judge. Even if it had been, some reasoning at least would have been required to justify the finding upon which it was based. This same error is replicated in paragraph 14.

11. In addition, there are no reasons given as to why the combined evidence of the other witnesses was rejected in its totality, and there are no reasons given as to why the Appellant's own parents should have been able or did in fact provide for the Appellant when he was still back in Pakistan.
12. These errors are sufficient to render the decision as a whole unsustainable. I would add that there are other elements of the judge's decision which, on my reading, are unclear to say the least, and there was certainly a contradiction within paragraph 14 itself as to whether there was present dependency upon the EEA national.
13. In light of the above I set aside the judge's decision.

Remaking of the decision: submissions

14. Both representatives were agreed that I could remake the decision without remitting the matter to the First-tier Tribunal. There was no new evidence from the Appellant despite standard directions having been issued by the Upper Tribunal and the fairly significant passage of time between the First-tier Tribunal hearing and the hearing before me. There was no application to adduce any new evidence or any application by the Appellant to adjourn this matter for a further hearing in due course.
15. I therefore remake my decision on the basis of the Respondent's bundle and the Appellant's bundle (indexed and paginated 1 to 125), both of which were before the First-tier Tribunal. I have taken all of this evidence into account.
16. By way of submissions, Miss Heybrook referred me to the money transfer receipts, particularly a summary at page 68 of the Appellant's bundle. She submitted that this evidence supported the rest of the evidence relating to financial support sent by the sponsor to the Appellant's family in Pakistan prior to his departure in 2010. She relied on the witness statement evidence of the sponsor, his wife and the Appellant's aunt. She submitted that when the Appellant was in Pakistan there had been material financial support for his essential needs.
17. Mr Avery submitted that the evidence before me was not sufficient to make out the Appellant's case. I should examine the evidence with some caution in light of the decisions in Moneke [2011] UKUT 00341 (IAC) and lhemedu [2011] UKUT 340 (IAC). I should not assume that post-departure evidence in relation to remittances necessarily meant that there had been pre-departure financial support.
18. Mr Avery did accept that there was present dependency and/or membership of the Sponsor's household.

19. Both representatives were agreed that if I were to allow this appeal on the basis that the Appellant was in fact an extended family member then this would only be to a limited extent, given the discretion yet to be exercised under Regulation 17(4) of the Regulations.

Remaking of the decision: findings and conclusions

20. I find that the Appellant is presently dependent upon the sponsor and is a member of his household in the United Kingdom. This point has been conceded by Mr Avery and in light of the evidence before me it was a concession quite properly made.
21. In respect of prior dependency, however, I am not satisfied that the Appellant has shown that he was even partly dependent upon material financial support for his essential needs whilst residing in Pakistan.
22. I note from the sponsor's evidence that he only became a citizen of Portugal in September of 2009, and having regard to the evidence of remittances in that year I find that only two sums of money were sent back by the sponsor to the family in Pakistan (see page 67 of the Appellant's bundle). There is no other documentary evidence in respect of the period prior to the Appellant's departure from Pakistan on 8 May 2010. I do not have an explanation as to why no records of money transfers were available for the period between the end of 2009 and May 2010. On balance, I do not accept that further funds were in fact remitted prior to departure. This in turn is indicative of an absence of need for funds in terms of showing on going dependency under the Regulations.
23. I accept that money has been sent back in subsequent post-decision years, but of course my focus is on whether this particular Appellant was dependent upon the sponsor whilst he (the Appellant) was still in Pakistan.
24. It is right that the witness statement evidence of the Appellant, the sponsor, the sponsor's wife, and the aunt, refers to financial provision having been sent back over the course of time, including the period when the Appellant was still there. There is also reference in this written evidence to some form of "financial hardship" faced by the Appellant's family. However, living in straitened financial circumstances is not, in and of itself, sufficient to prove relevant dependency.
25. Further, and in light of Moneke and Ihemedu, I scrutinise the evidence in this case with care (whilst applying only the balance of probabilities standard). There is nothing in the evidence before me that particularises the reasons for the money being sent back in respect of what it was used for and whether these funds related to the "essential needs" of the Appellant and his family.
26. It is important in my view for the Appellant (and indeed any appellant) to be able to provide specific evidence as to dependency, and this includes a need to show that any money sent back was for essential needs; be that

the provision of food, utilities or perhaps medical care and such like. In this case the only evidence I have is, in effect, of a very generalised nature. I have, for example, no evidence as to household expenses, shortfalls, or any other income.

27. Given the importance of this particular issue in the appeal both before the First-tier Tribunal and now, almost a year later, before me in the Upper Tribunal, one perhaps might have expected further and more detailed evidence to have been produced. It has not, and in light of the absence of detailed evidence, what I have said previously about the limited remittances, and on the balance of probabilities, the Appellant has not made out his case that he was dependent upon the sponsor prior to arriving in the United Kingdom.
28. This conclusion is not to be taken as a finding that the Appellant and his witnesses have lied: it is simply that the burden of proof has not been discharged.
29. The Appellant is not an extended family member of the sponsor and the appeal must be dismissed under the Regulations.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by dismissing the appeal under the Immigration (European Economic Area) Regulations 2006.

No anonymity direction is made.

Signed

Date: 26 January 2016

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT **FEE AWARD**

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

Signed

Date: 26 January 2016

Deputy Upper Tribunal Judge Norton-Taylor