Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03309/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent	**Decision & Reasons**
On 24th April 2016	**On 26th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SHERAZ ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Lorraine Barton (Counsel)
For the Respondent: Mr Andy McVeety (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge G D Tobin, promulgated on 1st July 2015, following a hearing at Manchester on

23rd April 2015. In the determination, the judge dismissed the appeal of Mr Sheraz Ali, whereupon the Appellant 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 male, a citizen of Pakistan, who was born on 25th May 1984. He appeals against the decision of the Respondent Secretary of State, dated 3rd December 2014, refusing his refusing his application for a residence card as the extended family member of an EEA national under Regulations 8(1) and 8(2) of the Immigration (EEA) Regulations 2006.

The Appellant's Claim

3. The Appellant's claim is that, having entered the UK on 7th May 2011, and then seeking leave to remain as a student, which was granted, he claims to have married a Mrs Adrienn Balog, a Hungarian national in December 2012, but that after that his EEA residence application was refused on 23rd September 2013, because the marriage had broken down. He is now dependent upon his EEA national Sponsor, a cousin.

The Refusal Letter

4. The refusal letter makes the point that the Appellant had not submitted any evidence of his dependency on his EEA national Sponsor at any time, either in Pakistan or in the United Kingdom. He had not provided any evidence that he was dependent on his EEA national Sponsor immediately prior to entering the United Kingdom. In fact, when on 17th April 2011 he was issued with entry clearance to come to the UK as a student, he made no mention whatsoever of the fact that he was dependent upon his Sponsor. As for his claimed dependency, the only evidence that he had submitted was one letter from the NHS Blood Transplant that is undated as evidence that he is dependent upon his EEA sponsoring cousin.

The Judge's Findings

5. The judge dismissed the appeal on the basis that the Appellant's evidence was simply not credible when taken in conjunction with the evidence of his Sponsor. The judge observed how,

> *"The Appellant grew up living with his father, mother and siblings in Pakistan. The Appellant's father owned a very large house with his brother (i.e. the Appellant's other uncle). The Appellant's father and uncle appeared to have well paid government jobs in Pakistan and a very large house, sufficient to accommodate two large families. The Appellant said that prior to leaving Pakistan, he was financially supported by his Sponsor who lived initially in Belgium and then in the UK. There is no documentary evidence to corroborate this and the Sponsor was not in particularly well paid employment, so I do not accept that this was the case"*. (Paragraph 13)

6. The judge then went on to record how the Appellant had moved to the UK and initially lived with his uncle, met his wife who was Hungarian, and married her and applied for a residence card but his application was rejected because *"he was not in a genuine, substantive or durable relationship"* (paragraph 14).

7. The judge went on to observe how *"the Appellant's Sponsor was in relatively modest accommodation and the Appellant's account of his living arrangements with his Sponsor is not credible"* (paragraph 15).

8. The judge added with the conclusion that, *"I do not accept that the Appellant was financially dependent on his EEA national Sponsor either in Pakistan or the United Kingdom"* (paragraph 16).

9. The appeal was dismissed.

Grounds of Application

10. The grounds of application state that the adverse credibility findings were not open to the judge and the judge was wrong to have concluded as he did.

11. On 12th December 2015, the Upper Tribunal granted permission on the basis that *"The judge may have erred by failing to set out anywhere a summary of the evidence heard"* and that *"the reader should be able to fully understand the claim"*.

12. On 20th January 2016, a robust Rule 24 response was entered by the Respondent Secretary of State. It made the following points. First, the judge did set out reasons for the refusal and previous refusals at paragraphs 2 to 5 of the determination. Second, the judge did set out the case for governing Regulation 8 of the EEA Regulations (at paragraphs 10 to 12). Third, the judge did assess the credibility of the appeal as is clear from paragraphs 13 to 17 of the determination. Finally, the case law does make it clear that Article 8 is not arguable in EEA Regulation appeals.

Submissions

13. At the hearing before me on 24th May 2016, Ms Barton, appearing on behalf of the Appellant submitted that the judge's determination failed to set out a summary of the evidence heard. The judge's core conclusions are set out at paragraph 13 but these were without the evidence being described.

14. Second, the judge had had regard to irrelevant circumstances when he stated that the Appellant had married a Hungarian national by the name of Adrienn Balog but, *"I do not accept that this was a genuine, substantive or durable relationship"* (paragraph 14) as this was not a live issue before the judge.

15. Third, Ms Barton also applied under Rule 15(2)(A) for new evidence to be submitted before this Tribunal. Mr McVeety, appearing on behalf of the Respondent Secretary of State, opposed it vehemently. Ms Barton submitted that this evidence showed the degree and extent of dependency that the Appellant had upon his Sponsor in the United Kingdom. On this basis it was open to this Tribunal, and well within its discretion, to allow consideration of this evidence. Mr McVeety replied that Rule 15(2)(A) cannot be used to go behind a judge's determination, by producing evidence, which could have been produced earlier, unless there is a proper explanation as to why that evidence could not have been produced. Ms Barton explained that the fact that her solicitor had not been able to provide her with a reason, and that she herself was unable to provide this Tribunal with a reason, was not a basis for prejudicing the Appellant such that this Tribunal *"should not put this Appellant on the back foot"*.

16. I disagree. Rule 15 is not a licence for litigants to undermine a judicial Tribunal's decision, on the basis of evidence, which could and should have been put before that Tribunal, but was not, without any adequate explanation whatsoever being proffered. That is the case here. I have no hesitation in rejecting that evidence. I apply the overriding principle and conclude that this evidence should not be considered.

17. Ms Barton went on to explain that the judge was wrong to conclude that the Appellant was not credible because he gave no reasons for this. Mr McVeety in his submissions replied that reasons were given. It simply was not credible that an Appellant, described by the judge as coming from a wealthy family in Pakistan, with a large house, and people holding government jobs, should find it necessary to become dependent upon a market worker in the UK with no evidence being provided in support.

18. As for Ms Barton's submission that the judge had regard to irrelevant considerations by referring to the fact that the Appellant's marriage with Ms Adrienn Balog was not a genuine, substantive and durable relationship, this was not an irrelevant consideration as the application to remain on the basis of a marriage to an EEA national failed precisely because the marriage did not come up to proof in the very part by the Regulations.

No Error of Law

19. I am satisfied that the making of the decision by the judge did not amount to the making of an error on a point of law (see Section 12(1) of TCE 2007) such that I should set aside the decision. It was made clear in **Budhathoki (reasons for decisions) [2014] UKUT 341** that,

> *"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and*

explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost" (per Haddon-Cave J).

20. This is precisely the case here. There is no requirement that a judge should set out a summary of the evidence. However, even if that was the case, it is plain that the judge does precisely this at paragraph 13 when he begins that, *"The evidence of the Appellant and the Sponsor (i.e. the Appellant's uncle) was not credible..."*. The judge then sets out in detail the position. In the same paragraph the judge records that, *"The Appellant said that prior to leaving Pakistan, he was financially supported by his Sponsor who lived initially in Belgium and then in the UK. There is no documentary evidence to corroborate this...."* (paragraph 13).

21. That is exactly in conformity with the refusal letter which observes that *"The only evidence that you have submitted as evidence that you reside with your EEA Sponsor is one letter from NHS Blood and Transplant that is undated"*. It is completely in conformity with the conclusion that, *"You have not provided any evidence of your dependency on your EEA national Sponsor at any time, either in Pakistan or in the United Kingdom"*.

22. Moreover, it cannot be a matter of irrelevance that this is an Appellant who had tried a number of means and methods to remain in the UK, arriving first as a student, on which occasion he made no mention whatsoever of the fact that he was dependent upon his UK Sponsor in any way, before getting married to a Hungarian national, in what turned out to be a futile attempt to remain in the UK, and only then in apparent desperation putting in a claim that he was dependent upon his UK Sponsor, but which was wholly unsubstantiated with any supporting evidence, until an application was made today under Rule 15 by Ms Barton for further matters to be considered by this Tribunal.

23. This is simply not tenable. The claim is devoid of any merit. The determination by Judge G D Tobin is meticulous, as it is measured, and provides reasons for refusal, and an analysis of the applicable case law, and the recital of the evidence heard, together with the reasons for its rejection. There is no error of law.

Notice of Decision

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

25. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd July 2016