



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/08615/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 21 July 2016

Decision & Reasons Promulgated  
On 27 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MR MOHAMED MIFLAN MUJREEN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F. Junior, Legal Representative, Lawland Solicitors  
For the Respondent: Ms Z. Ahmed, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Moan sitting at Birmingham on 17 December 2015) dismissing his appeal against the decision of the Secretary of State to refuse to issue him with a residence card under the Immigration (European Economic Area) Regulations 2006 as the extended family member of an EEA national exercising treaty rights in the UK. The First-tier Tribunal did not make an anonymity direction, and I do not consider the appellant requires anonymity for these proceedings in the Upper Tribunal.

### **The Reasons for Granting Permission to Appeal**

2. On 7 June 2016 Judge Adio gave his reasons for granting the appellant permission to appeal. The positive findings made by the Judge raised an arguable error of law in view of the outcome of the appeal as there was a lack of clarity in resolving the positive findings with the applicable case law of **Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC)**.

### **The Rule 24 Response**

3. On 20 June 2016 Karen Pal of the Specialist Appeals Team filed a Rule 24 response on behalf of the Secretary of State. On the basis of the evidence before the Judge there was little evidence of financial dependency prior to arrival in the UK and after entry to the UK. The Judge was entitled to find that the payments prior to 2012 did not constitute dependency.

### **Relevant Factual Background**

4. The appellant is a Sri Lankan national whose date of birth is 22 April 1992. In the summer of 2012 he applied for entry clearance as a student. He had savings of £9,000 in his bank account (application details, page 2 of 7). He was granted entry clearance valid until 11 February 2014, and he entered the UK on 5 October 2012. On 28 February 2014 he applied for further leave to remain as a student, but this application was refused with no right of appeal on 3 June 2014.
5. The appellant sought a residence card on 30 September 2014. He said he had lived with his uncle, a French citizen, since arriving in the UK and that he had been financially dependent on him prior to arriving in the UK. He provided documentary evidence to show that his uncle had transferred the sum of Rs 60,000 (£627.33 sterling equivalent on the exchange rate as at 13 February 2105) to his account every three months between the 30 June 2009 and 30 June 2010 by way of a standing order.
6. In the refusal letter of 13 February 2015 the respondent contended that this level of support was not credible as his uncle's current wage slips showed that he only earned £633 per month. Further, he had not provided any evidence of dependency on his sponsor between 30 June 2010 and his arrival in the UK in October 2012.

### **The Decision of the First-tier Tribunal**

7. Judge Moan received oral evidence from the appellant and his uncle. In his subsequent decision, he held at paragraph [59] that there was no independent evidence to support the claim of financial support prior to 2009. He accepted at paragraphs [60] that the uncle had made four payments of Rs 60,000 in 2009-2010, and that, as evidenced by an invoice dated 26 September 2012, the uncle had paid for his air fare, which cost Rs 63,000.
8. But at paragraph [61] he said he did not find it credible that the standing order payments had stopped in 2010 if it was true that the uncle had thereafter continued

to support the appellant and his entire family in Sri Lanka. At paragraph [72] he said he was not satisfied that the uncle had continued to send cash through a friend. The evidence for this had come solely from the appellant, and it was vague in detail.

## Discussion

9. In **Ihemedu (OFMs - in meaning) Nigeria [2011] UKUT 00340 (IAC)** Senior Immigration Judge Storey, as he then was, gave the following guidance which is quoted at sub-paragraph 2 of the head note:

An important consideration in the context of an OFM/extended family member case is that if a claimant had come to the UK without applying for a family permit from abroad ..., this will mean that the UK authorities have been prevented from conducting the extensive examination of the individual's personal circumstances envisaged by Reg 12(3) and in the course of such an examination check the documentation submitted. If an applicant chooses not to apply from abroad for a family permit under Reg 12 of the 2006 Regulations, thereby denying the UK authorities an opportunity to check documentation in the country concerned, *he cannot expect any relaxation in the burden of proof that applies to him when seeking to establish an EEA right*" (my emphasis).

10. In the same case, Judge Storey noted at paragraph [4] that Article 10(2)(e) of the Citizens Directive stipulated that in cases falling under Article 3(2)(a), which deals with OFMs, applicants must produce "a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the union citizen ...".
11. The same observation was made in **Moneke (EEA - OFMs) Nigeria [2011] UKUT 00341 (IAC)** at paragraph [42]:

We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency could ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by *cogent evidence that is in part documented* (my emphasis) and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.

12. On the topic of current dependency, Judge Moan gave adequate reasons for finding that the appellant had not shown that the disclosed level of financial support in the UK from his uncle showed that he needed his uncle's financial support to meet his essential needs. But he accepted that the appellant probably lived with his uncle, and so by necessary implication he accepted that the appellant was a member of his uncle's household. Following **Dauhoo**, which the judge cited at paragraph [20], it followed that it was not essential that the appellant should prove current dependency in order to qualify as an OFM.
13. But the appellant still had to prove prior dependency (as it was not suggested that he had been a member of his uncle's household in either France or Sri Lanka). Mr Junior, who did not appear below, submits that the judge did not adequately engage with the oral evidence that the uncle financially supported the appellant in the

period 2010 to 2012 in ways which did not show up in the documentary evidence. In essence his submission is that the judge ought to have found credible the oral evidence of the appellant that his uncle gave money to friends to pass on to him.

14. The fact that the judge made positive findings about financial support where this was shown by documentary evidence does not mean it was irrational of the judge to make adverse findings about the lack of financial support, and hence dependency, where there was an absence of supporting documentary evidence. On the contrary, the lack of supporting documentary evidence was sufficient in itself to justify such adverse findings. The judge did not ignore the oral evidence. He gave adequate reasons for finding that the oral evidence on the central issues in controversy (prior and current dependency) was not credible. The conclusion which he reached was fully open to him, as is illuminated by the case law cited in paragraphs 9 to 11 above.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and so the decision stands.

I make no anonymity direction.

Signed

Date **27 July 2016**

Deputy Upper Tribunal Judge Monson