



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/12216/2016
EA/12217/2016
EA/12219/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10th December 2018

Decision & Reasons Promulgated
On 3rd January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**MUHAMMAD ANWAR (FIRST APPELLANT)
SUGHRAN BIBI (SECOND APPELLANT)
ASAD ALI (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

UK VISAS - SHEFFIELD

Respondent

Representation:

For the Appellants: Mr R Ahmed of Counsel instructed by Fawad Law Associates
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants are citizens of Pakistan. The first and second Appellants are the parents of the third Appellant. They appealed against a decision of Judge Ennals (the judge) of the First-tier Tribunal (the FtT) promulgated on 19th March 2018.

2. The Appellants wished to enter the UK and applied for EEA family permits contending that they were entitled to such permits as the dependent family members of an EEA national exercising treaty rights in the UK. The EEA national is Dorota Mareviciute who is a Lithuanian citizen and who is married to Muhammad Ejaz Anwar who is the son of the first and second Appellants and brother of the third Appellant.
3. The Appellants were born in January 1954, February 1959, and January 2001 respectively. Their applications for family permits were refused on 5th October 2016 and the Appellants appealed to the FtT. Their appeals were dismissed. The judge accepted that the EEA national, to whom I shall refer as the Sponsor, was exercising treaty rights in the UK and was a qualified person as defined by regulation 6 of the EEA Regulations. The judge accepted that the Appellants and Sponsor were related as claimed. The judge also accepted that the Sponsor had provided five receipts for money transfers to the Appellants starting in March 2016. The judge accepted that funds had been sent on a monthly basis from 19th March 2016 up to the date of hearing.
4. The judge accepted that the Sponsor had been making regular payments to the Appellants since March 2016 but was not persuaded by the evidence that this was the Appellants' only source of income or support, and therefore was not satisfied that the Appellants are dependent upon the Sponsor.
5. The Appellants were granted permission to appeal to the Upper Tribunal by Judge Scott-Baker of the FtT.

Error of Law

6. On 4th September 2018 I heard submissions from both parties as to whether or not the FtT had materially erred in law. It was contended by the Respondent that there was no material error. Full details of the application for permission to appeal, the grant of permission, and the submissions made by both parties are contained in my error of law decision dated 6th September 2018 and promulgated on 14th September 2018.
7. I set out below paragraphs 14–21 of my decision, which contain my reasons for concluding that the FtT materially erred in law;

“14. I am persuaded that the judge materially erred in law for the following reasons.

15. With reference to the submission that the judge imposed too high a test when considering dependency, I find that it is not clear what test was considered by the judge when considering dependency. Mr Ahmad referred to Jia [2007] 7 ECR 545 and SM (India) [2009] EWCA Civ 1426. I

find there is a more recent authority, that being Lim [2015] EWCA Civ 1383 in which Elias LJ stated at paragraph 32 when considering dependency;

‘In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights’.

16. The evidence in this appeal was that the first Appellant had ceased employment in 2014 and thereafter had no income and no pension. His wife and child had no income. They lived rent free with the first Appellant’s brother.
17. The judge accepted that the Sponsor had been sending funds to the Appellants since March 2016. The judge errs by not providing adequate reasons to explain why this does not amount to dependency. This is linked to the point that it is not clear what test the judge applied when considering dependency.
18. It is not clear from reading the decision what facts were found by the judge. At paragraph 14 the judge sets out the account given, but does not make it clear what facts are accepted.
19. For the above reasons the decision is unsafe and must be set aside. I do not find it is necessary to remit this appeal back to the FtT, having considered paragraph 7 of the Senior President’s Practice Statements.
20. It was submitted at the error of law hearing that there would need to be further evidence in relation to dependency and I accept that. This can be considered by the Upper Tribunal. There will therefore be a hearing before the Upper Tribunal to consider dependency. The finding by the FtT that the Sponsor has been sending funds since March 2016 has not been challenged and is therefore preserved. The relationship between the Sponsor and Appellants has not been challenged and the conclusions on that issue are preserved. Also preserved is the finding that the Sponsor is a qualified person.

21. The judge makes reference to the EEA Regulations 2016, but it would appear to be the case that the relevant regulations are the 2006 Regulations”.

Re-making the Decision – the Upper Tribunal Hearing 10th December 2018

8. At the commencement of the hearing Mr Ahmed submitted further documentary evidence which he had received from his instructing solicitors. This evidence was served in breach of directions that any further documentary evidence should be served no later than fourteen clear calendar days before the hearing, and was neither indexed nor paginated. However, Mr Bates did not object to the documentary evidence being submitted in evidence, and did not need further time to consider it. I therefore decided that it was appropriate to admit the documents into evidence.
9. The documents submitted at the hearing contain an affidavit from the second Appellant, an affidavit from the head of the village in which the Appellants live in Pakistan, a schedule from Ria Financial Services Ltd detailing funds sent by the Sponsor to the Appellants, together with some further documents showing the transfer of funds.
10. The representatives confirmed that the issue to be decided was whether the Appellants were dependent upon the Sponsor and both representatives were ready to proceed and there was no application for an adjournment.
11. I established that I had received all documentation to be relied upon. In addition to the documents submitted at the commencement of the hearing, I had the Respondent’s bundle that had been before the FtT, and the Appellants’ bundle which had been before the FtT comprising 67 pages.
12. Oral evidence was given by Muhammad Anwar who adopted as his evidence his witness statement dated 6th March 2018. His statement confirms that he is a citizen of Pakistan and that he entered into an Islamic marriage with the Sponsor in July 2014. Their marriage was registered at Manchester Registry Office on 11th March 2016. Mr Anwar holds an EEA residence card as the spouse of an EEA national exercising treaty rights in the UK. He lived with the Appellants in Pakistan until he came to the UK in 2011 as a student.
13. He confirmed that the first Appellant, his father, had been in employment until January 2014 but has not worked thereafter, and does not have any income other than what is sent from the UK. Mr Anwar confirmed that he and the Sponsor have been sending and continue to send funds to the Appellants, who have no other form of income.

14. Mr Anwar gave his evidence with the assistance of an interpreter in Urdu, and there were no difficulties in communication.
15. Oral evidence was also given by the Sponsor with the assistance of an interpreter in Lithuanian. There were no difficulties in communication. The Sponsor adopted her witness statement dated 6th March 2018. She confirmed her relationship with Mr Anwar and that they have a child together born on 7th August 2015. She further confirmed exercising her treaty rights by way of employment and that she and her husband have been sending money to Pakistan in order to support the Appellants who have no other income.
16. Both witnesses were cross-examined. I recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them here. If relevant I will refer to the oral evidence when I set out my conclusions and reasons.
17. At the conclusion of oral evidence I heard oral submissions. On behalf of the Respondent it was submitted that the Appellants had not discharged the burden of proof in order to show that they were financially dependent upon the Sponsor. I was asked to note that there was no witness statement from the brother of the first Appellant who provided free accommodation and who had provided financial support until March 2016. I was asked to find that as the Appellants had not proved dependency the appeals should be dismissed.
18. On behalf of the Appellants it was submitted that the burden of proof had been discharged. I was asked to accept the evidence given by the witnesses at the hearing. There was a letter at page 49 of the Appellants' bundle to confirm that the first Appellant had employment until January 2016 and thereafter was not in employment and had no income. This letter came from the first Appellant's previous employer.
19. I was also asked to note the affidavit from the head of the Appellants' village which confirmed that the first and second Appellants had no employment and were receiving funds from the UK.
20. I was asked to accept the oral evidence of Mr Anwar who when asked what his family spent the money on that they received from the UK, confirmed that it was spent on food, medicine, school fees for the third Appellant, and doctor's fees, as well as paying the first Appellant's brother for the cost of utilities such as gas, electricity and water.
21. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

22. The issue that I must decide relates to dependency. The test that I apply is that stated at paragraph 32 of Lim referred to above. The burden of proof is on the Appellants and the standard of proof is a balance of probability.
23. The preserved findings from the FtT hearing are that the Sponsor has been sending funds to the Appellants since March 2016, the relationship between the Sponsor and Appellants is as claimed, and the Sponsor is a qualified person as she is exercising treaty rights as a worker in the UK.
24. I have considered all the evidence, both oral and documentary. I find the evidence given by the two witnesses to be credible. The evidence was not undermined by cross-examination.
25. I accept that documentary evidence submitted at the hearing proves that between 19th March 2016 and 7th December 2018 the Sponsor sent funds to the Appellants on 34 separate occasions. The amount of money varied between £143 and £300.
26. I accept that the first Appellant was in employment until January 2014 and has not had employment since. Neither the second or third Appellants have had any employment. I conclude that they live in accommodation provided by the first Appellant's brother for which they do not pay rent, but for which they make a contribution to the utility bills. This contribution is paid for using the funds sent from the Sponsor in the UK.
27. I am satisfied that the first Appellant's brother provided some financial support up until 2016. He no longer does so because he has his own family to support including two children, and money is provided by the Sponsor and her husband in the UK.
28. I find that a combination of the oral evidence and documentary evidence satisfies the burden of proof. Without the funds from the UK, the Appellants would be unable to support themselves. The funds sent by the Sponsor and her husband are necessary to enable the Appellants to meet their basic needs.
29. I therefore conclude that the Appellants have proved that they are dependent upon the Sponsor in the UK, and as that was the only issue remaining in dispute, I allow the appeals of the Appellants as they are entitled to EEA family permits.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The appeals are allowed.

Anonymity

The FtT made no anonymity direction. There was no application made to the Upper Tribunal for an anonymity direction and I see no need to make such an order.

Signed

Date

10th December 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeals I have considered whether to make fee awards. I make no fee awards. The appeals have been allowed because of evidence considered by the Tribunal that was not before the initial decision maker.

Signed

Date

10th December 2018

Deputy Upper Tribunal Judge M A Hall