



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/12973/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 March 2019

Decision & Reasons Promulgated  
On 09 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

MUHAMMAD YASIR ANWAR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Gajjar of Counsel instructed by Law Lane Solicitors

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

**DECISION AND REASONS**

**Background**

1. This is an appeal against the decision of First-tier Tribunal Judge Feeney promulgated on 8 January 2019 in which he dismissed the appeal of Mr Muhammad Yasir Anwar against a decision of the Respondent dated 12 April 2016 to refuse an application under the EEA Regulations for a residence card.

2. The Appellant is a citizen of Pakistan born on 19 June 1977. He entered the United Kingdom on 4 January 2009 pursuant to entry clearance as a visitor. It is said that he has remained in the United Kingdom since that time, having necessarily become an overstayer upon the expiry of the six months' leave to enter that he would have been granted as a visitor.
3. The Appellant was served with documents as an overstayer on 1 July 2014. On 31 July 2014 he made an application for leave to remain relying on Article 8 of the ECHR. The application was refused with no right of appeal.
4. More recently, the Appellant made an application for a residence card on 14 October 2015: it is this application and its refusal that are the subject of these proceedings.
5. The Appellant's application for a residence card was based on his relationship with Mr [SA] (d.o.b. [~] 1962), a national of Germany. Mr [A] is the Appellant's maternal cousin - a relationship that seemingly has not ever been in dispute.
6. The exact citizenship or nationality history of Mr [A] is not immediately apparent from the materials before the First-tier Tribunal. The application form completed by the Appellant in support of his claim to be issued with a residence card indicates at section 2.10 that Mr [A] has never held any nationality other than German nationality. The factual matrix of the case suggests that that was erroneous. Indeed it is part of the Appellant's case that he was a member of the Mr [A]'s household in Pakistan when Mr [A] left Pakistan to come to Europe to work and to send remittances back to Pakistan.
7. The identification documents that were provided in respect of Mr [A] comprise a national identity card and a copy of the personal details page of his passport: see for example the Appellant's bundle before the First-tier Tribunal at pages 20-22. The national identity card - which it seems to me is not inevitably, without more, evidence of nationality rather than merely residence - appears to have been issued in March 2014. The passport, which of course I accept is evidence of nationality, has an issue date of 7 March 2014. Before me Mr Gajjar, having taken instructions from the Appellant, confirmed that this was Mr [A]'s first German passport. It follows that Mr [A] did not seemingly acquire German nationality until in or about early 2014.
8. As I have noted, such matters were not manifestly clear before the First-tier Tribunal, but have been clarified to me for the purposes of the proceedings before the Upper Tribunal.
9. It is said that Mr [A] entered the United Kingdom in January 2015, taking employment in a convenience store shortly afterwards and thereby exercising his 'Treaty rights' as a worker.
10. It was the Appellant's case that he began to live with Mr [A] upon Mr [A]'s arrival in the United Kingdom, and that he has remained living with him both as a dependant and as a member of his household ever since.

11. The Appellant's application for a residence card was refused by way of a Notice of Immigration Decision dated 12 April 2016 with reference to regulation 8 of the Immigration (European Economic Area) Regulations 2006 for reasons set out in an accompanying 'reasons for refusal' letter ('RFRL').
12. The Appellant appealed to the IAC.
13. Before the case reached Judge Feeney it had to, as it were, 'navigate' the effects of the **Sala** case law: the Appellant's appeal was initially dealt with on the basis that there was no right of appeal for a person claiming to be an 'extended family member'; a decision to this effect was then set aside, and in due course the matter was listed before Judge Feeney on 30 November 2018.
14. The appeal was dismissed for the reasons set out in the decision of Judge Feeney promulgated on 8 January 2019.
15. The Appellant applied for permission to appeal to the Upper Tribunal which was granted on 8 February 2019.

### **Consideration**

16. I turn first to a consideration of the decision of the First-tier Tribunal Judge, before considering the grounds of appeal that seek to impugn the decision.
17. At paragraph 4 the Judge set out the provisions of regulation 8 insofar as they were relevant. It is helpful to repeat them here:
 

*"8(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and –*

  - (a) the person is/was residing in a country other than the United Kingdom and is/was dependent upon the EEA national or is a member of his household;*
  - (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or*
  - (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household."*
18. The Judge directed himself to the case of **Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79** (see paragraph 5 of the decision), and in particular identified the four possible permutations derived from regulation 8 in which the regulation might be satisfied with respect to either prior dependency or prior membership of the household and present dependency and/or present membership of the household.
19. At paragraph 10 the Judge noted that Mr [A] was not present at the hearing, being unable to attend because he had travelled to Pakistan in consequence of the recent demise of his mother. It is noted that there was evidence of this circumstance. The Judge consequently raised the question of an adjournment with the Appellant's

representative who responded by indicating his instructions were to proceed in the absence of the Mr [A]. The appeal proceeded accordingly.

20. In the Decision of the First-tier Tribunal, the Judge has rehearsed the substance of the Respondent's case (paragraph 11) before setting out the substance of the Appellant's case (paragraphs 12-14). Paragraph 12 deals in general terms with the Appellant's circumstances after his arrival in the United Kingdom; it is paragraphs 13 and 14 that record the essence of the case in respect of membership of household and/or dependency:

*"13. [The Appellant] explained that prior to his arrival in the UK he was living with the sponsor's wife and children (the sponsor was working in Germany at the time). He moved there at his mother's request, to look after the sponsor's family while he was working in Germany. He explained that the sponsor would send money to his wife and then the sponsor's wife would give money to the appellant who would then bear the expenses of the family.*

*14. He also explained that the sponsor sent him money while he was in the UK. He sent the appellant £35 per week. As the appellant did not have a bank account at the time, the sponsor would give money to his friends who came to visit him in Germany and they would then give this to the appellant when they returned to the UK."*

21. I pause to note that there is no suggestion in the grounds of challenge to the Upper Tribunal that the First-tier Tribunal Judge had misunderstood the essential basis of the Appellant's case, and there was no suggestion that the First-tier Tribunal Judge had misunderstood or failed to accurately record the substance of the Appellant's oral evidence before the First-tier Tribunal.

22. The Judge then proceeded to make findings of fact, setting out his reasons in the process.

23. At paragraph 16 the Judge expressly stated that he accepted that the Appellant and the EEA national "are cousins". However, at paragraphs 17 and 18 the Judge rejected the claims of prior dependency and prior membership of Mr [A]'s household. These particular paragraphs are germane to the outcome; accordingly I set them out in full here:

*"17. I reject that there was prior dependency in this case:*

- a) In Section 6 of the application form, the appellant claimed that he did not receive any money from the sponsor or from other relatives or friends prior to his arrival in the UK. This is at odds with what he now claims, specifically that the sponsor transferred money to his wife who then gave it to the appellant to use to look after the family.*
- b) No documentary evidence has been provided to show that money was transferred to Pakistan in this way.*
- c) Even taken at its highest, the appellant was living with the sponsor's family to look after them; if anything the sponsor was dependent on*

*the appellant to care for his family in his absence, not the other way round.*

- d) *The appellant told me his mother asked him to go to live with his cousin to look after the family while the sponsor was away. This is inconsistent with his witness statement which states that he and his cousin lived together in Pakistan prior to that.*
  - e) *There is limited explanation as to why he did not work or why he was unable to provide for himself while in Pakistan.*
  - f) *I do not accept that the sponsor sent money to the appellant in the UK while he was in Germany. Aside from the appellant's own evidence and the content of his sponsor's statement, there is limited other evidence to show that money was given to the appellant. The appellant explains that money was sent to him from his uncle via friends. There are no witness statements from friends to show that this was the method used. There is no explanation as to why money was not transferred to their accounts instead.*
  - g) *He lived in accommodation rented by his friends and even if I were to accept that his uncle sent him £35 per week he does not adequately explain how he was able to meet the costs of rent, utilities, travel and other expenses (aside from food which he claims he was given by the mosque) during that time. I have taken into account the guidance in **Lim [2015] EWCA Civ 1383**. The issue to determine is whether the appellant was able to support himself or not, even if there is financial support given by the EEA sponsor. For reasons set out above, I am not satisfied based on the evidence before me that the appellant is able to show that he was dependent on his uncle prior to his arrival in the UK.*
18. *I do not accept that the appellant was part of the sponsor's household. These are my reasons:*
- a) *There is limited evidence to show that the appellant was living with the sponsor's family in Pakistan. I note the contents of the sponsor's statement but the evidence is limited to an assertion that they were part of the same household in Pakistan. The sponsor has not been cross-examined on his evidence and no adjournment has been sought to give the respondent an opportunity to test his evidence during the hearing. No documentary evidence has been provided to support the claim.*
  - b) *In his application form the appellant claims he was not a member of the sponsor's household before coming to the UK.*
  - c) *The appellant was resident here for 6 years prior to the sponsor's arrival. He claims he lived with friends in accommodation which they rented. He could not be said to have been part of the sponsor's household during this time."*

24. The Judge otherwise accepted that the Appellant and Mr [A] lived together in the United Kingdom: as such he did not appear to dispute the claim that there was a current sharing of household, or that the Appellant was dependent upon Mr [A] (in respect of whom evidence of income was filed before the First-tier Tribunal).
25. The grounds of appeal - which were ably developed before me by Mr Gajjar - take issue in the first instance with the Judge's reference to Mr [A] being the uncle of the Appellant, rather than his cousin.
26. I have already quoted above one such instance, from paragraph 17(g) of the Decision. There are two further instances in the decision at paragraphs 20 and 21. It is submitted that this is indicative of a lack of attention to the facts and details of the case.
27. It is further submitted that this circumstance needs to be considered alongside the Judge's apparent oversight of supporting documents which were particularly germane to the question of whether the Appellant was a member of Mr [A]'s household in Pakistan. It is argued that these two matters taken together are indicative of a deficiency in the Judge's level of scrutiny of the facts and details of the case that effectively render the conclusions unsound, and vulnerable to being set aside on the basis of error of law.
28. In respect of the oversight of supporting documents, the Appellant emphasises in particular the final sentence of paragraph 18(a) quoted above - "*No documentary evidence has been provided to support the claim*". Further to this, my attention was directed to two documents that appear at pages 25 and 26 of the Appellant's bundle before the First-tier Tribunal. These photocopied documents are essentially similar in nature: they are electricity bills for the Faisalabad Electric Supply Company for the bill month March 2006 and the bill month May 2006 respectively, and under the section 'Name and address' the names of both the Appellant and Mr [A] appear.
29. The grounds also plead that the Judge erred in failing to engage with Article 8 of the ECHR. That was not a matter to which any reference was made in the grant of permission to appeal, and it is not a matter that has been pursued before me by Mr Gajjar. It is of course the case that no such ground of appeal was available to the Appellant before the First-tier Tribunal. Accordingly I say nothing more on this point.
30. I am not persuaded that there is any material substance to the point raised in respect of the Judge's inadvertent reference to Mr [A] as an uncle rather than a cousin. It seems to me absolutely clear from the Decision read as a whole that the Judge was alert to the exact relationship between the Appellant and Mr [A]: indeed he is overt at paragraph 16 in stating the nature of that relationship. In context it seems to me that the references to 'uncle' rather than 'cousin' are to be seen as mere slips. In any event it is difficult to see that it has made any material effect on the Judge's analysis of other aspects of the evidence. Nor do I consider there is any basis for concluding that such errors are indicative of a failure to engage properly with the material issues

in the appeal. Accordingly, whether taken in isolation or in combination with other points, I see no merit in this line of challenge.

31. The Appellant's challenge in respect of the documentary evidence having seemingly been overlooked, however, has more merit.
32. Mr Avery on behalf of the Respondent appropriately points out that the documents alone could not be determinative of the issue as to whether or not the Appellant was a member of Mr [A]'s household in Pakistan. He also appropriately points out that the documents are mere photocopies, and to that extent the weight to be accorded them should be considered diminished. In contrast, Mr Gajjar says that whilst there may be arguments as to the evidential weight to be accorded these documents, they should properly have been the subject of scrutiny by the First-tier Tribunal. I can see the force to that submission. However, it seems to me that this needs to be considered in the wider context of the appeal, and ultimately I have reached the conclusion that *if* there is an error in this regard it is not material, and could not have made any difference to the outcome. Accordingly, even if there were an error I would not be prepared to exercise the discretion in section 12(2) of the Tribunals, Courts and Enforcement Act 2007 to set aside the decision of the First-tier Tribunal.
33. I shall expand upon this below. However, before doing so I note one further matter.
34. During the course of discussion Mr Gajja took issue with the contents of paragraph 18(c) of the Decision in so far as it appeared to have as its premise the notion that the Appellant could not satisfy the requirement in respect of prior membership of the sponsor's household because he had arrived in the United Kingdom some six years prior to Mr [A] and had therefore not been residing in Mr [A]'s household in Pakistan for a considerable period prior to Mr [A] joining him in the United Kingdom. (This was not a matter expressly pleaded in the rounds of appeal.)
35. My attention was directed to the case of **Aladeselu and others v Secretary of State for the Home Department [2013] EWCA Civ 144**, in particular at paragraphs 48 and 49. Those paragraphs indicate that it is not a prerequisite that an applicant has either been a member of the EEA national's household immediately prior to their being in the UK together, or that the order of arrival is such that the applicant might not arrive before the EEA national. It was suggested that this again undermined the Judge's findings in respect of the issue of 'prior household'.
36. However, in my judgement both of these matters – the oversight of the photocopies of utility bills, and the unpleaded criticism of paragraph 18(c) utility - are essentially immaterial because of what is said in the case of **Moneke (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC)**.
37. Paragraph 2 of the headnote of **Moneke** states:
 

*"In either case the dependency or membership of the household must be on a person who is an EEA national at the material time. For this reason it is essential that tribunal judges establish when the sponsor acquired EEA nationality."*

38. The discussion referred to at the beginning of this decision makes it plain that the Mr [A] acquired his EEA nationality in early 2014. This would have been approximately five years after the Appellant entered the United Kingdom as a visitor. It necessarily follows that even if the Judge is wrong in his finding in respect of 'household' in Pakistan, the Appellant would have left the Mr [A]'s household in Pakistan some five years prior to Mr [A] becoming an EEA national: thus it cannot be said that the Appellant was the member of a household of an EEA national whilst he was in Pakistan. This is adversely determinative of the issue in respect of both 'prior household' and 'prior dependency' in Pakistan.
39. The issue of 'prior household' in the UK does not arise.
40. So far as the possibility of there having been a 'prior dependency' in the UK is concerned, I find that there is nothing in the challenge that touches upon the Judge's clear and cogent findings in this regard.
41. In all such circumstances I conclude that the Judge has made entirely sustainable and well-reasoned findings in respect of prior dependency in relation to the Appellant's circumstances in the UK - which necessarily covers the period of time from 2014 until 2015, that is to say the time from when Mr [A] acquired nationality of an EEA state and his entry to the United Kingdom. The Judge's decision is not to be impugned in this regard.
42. In all the circumstances the decision to refuse the appeal on the basis that the Appellant had failed to demonstrate that he satisfied the requirements of the Regulations was the right decision. Insofar as there may have been an error of law, I decline to exercise my discretion to set aside the decision. Accordingly the decision of the First-tier Tribunal stands.
43. For completeness I note that the Appellant submitted a bundle of documents constituting what was said to be new evidence. Mr Gajjar did not suggest that I should admit such evidence into the proceedings for the purpose of consideration of 'error of law'. Nonetheless there was brief discussion of the contents of those documents. Mr Avery suggested at one point that the reference in the Appellant's most recent witness statement of 4 March 2019 to not having provided adequate documentary evidence was an admission of the deficiency of the materials before the First-tier Tribunal. Mr Gajjar appropriately pointed out that this particular passage in the witness statement was no more than the Appellant summarising the basis of the Judge's decision and was not an acknowledgment of any shortcomings in the evidence filed.
44. However, one other observation that might be made in respect of the witness statement is that it appears to advance a set of circumstances with regard to the situation in Pakistan that is discrepant with the Appellant's oral testimony as recorded in the Decision of the First-tier Tribunal. As I have noted above, there was no challenge or suggestion in the grounds of appeal that the Judge had misunderstood or misrecorded the Appellant's testimony. The Judge noted that the



Appellant's oral evidence was to the effect that his own mother had requested he join Mr [A]'s household in Pakistan after Mr [A] had left for Germany in order that he might look after Mr [A]'s wife and children (paragraph 13). However, in the latest witness statement the Appellant claims that he joined Mr [A]'s household at the age of 5 having been adopted by his aunt. It might be thought that that constitutes at least a second version of events - if not a third bearing in mind the contents of the application form denied that he had been a member of the household at all.

45. Be that as it may, this is not a matter that has informed the consideration herein of 'error of law'. I only mention it lest this matter goes any further, or in the event that the Appellant might be minded to make further applications or representations. In any event, this is a matter that relates to the circumstances prior to the EEA sponsor's acquisition of citizenship, and so on my reasoning would ultimately be immaterial.

### **Notice of Decision**

46. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.
47. The Appellant's appeal remains dismissed.
48. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: **5 April 2019**

**Deputy Upper Tribunal Judge I A Lewis**