Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00032/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice Belfast	**Decision & Reasons Promulgated**
On 5 December 2019	**On 14 January 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR RUPINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Barr, legal representative
For the Respondent: Mr Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"). The challenge is to a decision of the respondent made on 24 November 2017 to refuse to issue them with a residence card as confirmation of their right to reside as the carers of an EEA national child (their son). The decision was taken on the basis that they had not provided adequate evidence to show that their son was a self-sufficient person as it was not permissible for him to rely on income from the parents unless it was lawful employment.

2. On appeal to the First-tier Tribunal, the judge took the view that the appellant did not meet the requirements of the EEA Regulations as the child was not sufficient. He reached that conclusion on the basis that there was insufficient evidence of the appellant trading as claimed; that the accounts provided were unaudited, it not being clear either what the day-to-day expenditure was [19] and what was savings [20]. That was in addition to the fact that the appellant had known that the appellant had no legal status such that he was entitled to work legitimately. The judge was not satisfied either that there was, as is required by the Regulations, comprehensive medical insurance in place.

3. The judge although asked to follow the decision of the Court of Appeal of Northern Ireland in Bajratari v Secretary of State for the Home Department [2017] NICA 74, declined to do so, deciding to follow the decisions from the Court of Appeal in England and Wales.

4. Permission to appeal against that decision was granted and the matter then came before me in Belfast on 6 June 2019. For the reasons set out in that decision I found that the decision of the First-tier Tribunal involved the making of an error of law. Subsequent to my decision which was given orally, Advocate General Szpunar produced his opinion in Bajratari which by then had reached the European Court of Justice. Subsequent to my decision, the European Court of Justice handed down its decision as Bajratari [2019] EUECJ C-98/18.

5. At the resumed hearing, Mr Barr sought to rely on written submissions and a bundle of material said to contain "up-to-date proof of the appellant's situation.

6. At the outset of the hearing it was agreed that, in light of the Court of Justice's decision, the sole issue was whether there was self-sufficient. Mr Barr submitted that there was evidence that the family all had comprehensive health insurance and that the material from page 26 in the bundle onwards from HM Revenue & Customs showed the appellant's income. He explained that the paperwork for the tax year 2018 to 2019 had not yet been completed. Mr Barr drew my attention to the fact that the appellant owns a house which is subject to a mortgage.

7. In response to my questions, Mr Barr was unable to tell me what the monthly outgoings were and, when asked what the income had been over the last eighteen months, referred me to the bank statements from page 69 onwards. He submitted it could be inferred that the appellant could meet his expenses, paid his bills as the business has not folded.

8. Mr Govan submitted that what was missing was any sort of evidence to establish the appellant's current evidence, a breakdown of his circumstances, how he supports his children and what his personal expenses are. He submitted that the new evidence did not address what he described as an "evidential void".

9. Mr Govan submitted that in any event the profits shown in each tax year were low and as regards the savings account which it is said contained savings available to the family which has been amassed through money given to them by the extended family and friends, need not necessarily be available to him. In response, Mr Barr

sought to rely on his written submissions, adding that it was clear that the appellant did not need to rely on the funds in the savings account and that there was sufficient evidence to show that he is self-sufficient.

10. In the circumstances, I permitted Mr Barr to produce a schedule of income and expenditure within seven days and to permit Mr Govan to make written submissions in response. I have taken both of these into account in reaching my decision.

The Law

11. The issue in this case is whether the child is self-sufficient within the meaning of the EEA Regulations, taking into account the resources of the parents. Self-sufficiency is defined by reference to Regulation 4 which provides as follows:

> (c) *"self-sufficient person"* means a person who has—
>
> (i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during the person's period of residence; and
>
> (ii) comprehensive sickness insurance cover in the United Kingdom;

12. The key phrase is whether the person in question has "sufficient resources so as to avoid being a burden on the social assistance of the host member state" which in this case involves assessing the position of the parents.

13. Despite that being the issue before me, neither party sought to address me as to its meaning, still less to address me and any of the relevant case law before me. Some assistance as to the meaning of this phrase can be drawn from SG v Tameside [2010] UKUT and Brey [2013] EUECJ C-140/12, as well as AMS v SSWP (PC) [2017] UKUT 48 (AAC).

14. The Upper Tribunal's task has been rendered even more difficult by the failure by the appellant to provide a proper schedule of income and expenditure. Whilst that has now, to a limited extent, been rectified by the production of what purports to be a schedule of income and expenditure to 31 August 2019, that is defective in a number of respects. There is a distinct lack of detail in terms of what the business expenses are and whilst it is said that the drawings from the business are £21,676.01 and these appear to cover a number of things, it seems to say the least implausible that food would account for only £196.79 for twelve months. It is unclear also why the wife's wages at £4,416 are seen as a drawing of the business and also one would assume, an expense of the business before there are drawings.

15. On any view, given that the drawings are in excess of profit by over £4,000, the income from the business is not sufficient for the family's expenses. Further, there is an anomaly, in that although the schedule of income and expenditure shows money received from the family as £20,201.48 through July 2019 the most recent instant saver statement dated 12 December 2019 shows no withdrawals during the entirety of the period covered, that is 9 November 2018 to 9 December 2019 so there is no evidence that this sum, included in income, has in fact been spent. Further, the earlier statement which covers 26 July 2018 to 25 July 2019 shows no withdrawals either.

16. In short, I am not satisfied that the profit and loss account provided or the schedule of income and expenditure provides an accurate account of the family's income, making it impossible to assess properly whether there is self-sufficiency within the meaning of the Regulations. It is simply not good enough to submit that because the mortgage has been paid and other bills have been paid that there are sufficient resources available.

17. While I accept that the money in the account has been paid into the account by a small number off depositors, primarily S and PS Fashions and Kul Vinder Singh I have only the appellant's word for it that these are tips.

18. Nonetheless, despite Mr Govan's submissions, I accept that these would be available to the appellant as a matter of law and certainly would be treated as savings belonging to him for the purposes of assessing benefits. For example, the level is such that the appellant would not be entitled to universal credit, income support or housing benefit, still less would he be entitled to council tax benefit. He would be entitled to working or child tax credit as the assessment of that is based on taxable income and the interest earned by the account is considerably less than the £300 which is the minimum amount which is to be taken into account.

19. In light of the observation that despite it being presented that the appellant is reliant on funds in the instant saver account, yet there are no withdrawals, I am satisfied that in reality these funds are not available to the appellant and that the savings account does not provide an accurate view of the funds available to the appellant. They may well be in his name but that in the facts of this case is insufficient given the discrepancies in the evidence.

20. Accordingly, the appellant has failed to demonstrate that he has sufficient resources available such that the child is a self-sufficient person. I accept that the requirement for comprehensive sickness insurance is met but the other requirement is not. Accordingly, I dismiss the appeal.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

(2) I remake the appeal by dismissing the appeal under the Immigration (European Economic Area) Regulations 2016.

No anonymity direction is made.

Signed Date 9 January 2020

Upper Tribunal Judge Rintoul