IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04785/2019 (P)

THE IMMIGRATION ACTS

Decided Under Rule 34	**Decision & Reasons Promulgated**
On 16 September 2020	**On 21 September 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

WASIF BUTT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant was born on 12 October 1983 and is a male citizen of Pakistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 21 August 2019 refusing him an EEA residence card as confirmation of his right of residence in the United Kingdom. The First-tier Tribunal, in the decision promulgation on 25 November 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Directions were made by Upper Tribunal Judge Smith on 21 July 2020 indicating that the judge had reached the provisional view that it would be appropriate to determine the matters of error of law/setting aside the First-tier Tribunal decision without a hearing. Both parties have responded in writing to those directions. Significantly, neither party has requested an oral initial hearing. I have considered all the papers very carefully. Having regard to the overriding objective, I consider that the question of error of

law may be determined justly without a hearing and by reference to the detailed written submissions filed by both parties and to all the material which was before the First-tier Tribunal. I have, therefore, proceeded to determine that the appeal without a hearing.

3. There are two grounds of appeal. First, the appellant asserts that the judge incorrectly referred to Mr Younas (hereafter referred to as 'the sponsor') as a 'distant' cousin; evidence indicated that the sponsor was the first cousin of the appellant. The appellant asserts that the judge, as a result of this error, 'applied a stringent standard in relation to the evidence required to show dependency.' The appellant claims that, by misunderstanding the nature of the relationship, the judge demanded more detailed evidence of dependency than he would have sought had he understood that the relationship was that of first cousin. As a consequence, the appellant claims that the judge has dealt with his case on an incorrect and unfair basis.

4. At [22], the judge noted that, 'the appellant's case has changed somewhat after the refusal letter which pointed out that the sister was not an EEA citizen whilst the appellant was in Pakistan and therefore could not claim to be dependent upon an EEA citizen before he left his homeland; he now claims dependency upon his cousin (no family tree provided or no DNA evidence to show relationship) who is married to the sister.' The judge went on to say that, 'whilst I accept the appellant's and sponsor's evidence can be accepted on the balance of probabilities that the sponsor is married to a distant cousin, to claim dependency on a distant family member requires cogent evidence of dependency as for a distant cousin to provide for a fully able young man you are studying abroad and to accept this persons dependency upon them would need to substantial evidence of financial transactions and the like to show that the dependency exists on the balance of probabilities. *(sic)*' That sentence does not constitute elegant or clear prose by any standard. However, I consider that the meaning is sufficiently clear even though the first of two references made by the judge to a 'distant cousin' appears to be to the appellant's sister which, on the facts of this case, makes no sense. What is clear is that in this paragraph and elsewhere in the decision is that the judge correctly refers to the relationship being simply that of 'cousin' which I take in its usual meaning as an abbreviated version of 'first cousin'. Moreover, I am not satisfied that what the judge says in this paragraph about the tribunal requiring 'cogent evidence of dependency' and 'substantial evidence of financial transactions… to show that dependency exists on the balance of probabilities' represents a threshold or test which is any more stringent than the tribunal would expect to be met in respect of an appeal by any extended family member. Although the decision could have been better clearly expressed, I am satisfied that it is adequately cogent and also that the judge has understood the nature of the claimed relationship in assessing the evidence of dependency.

5. The second part of ground one states that the judge made a mistake by referring to remittances received by the appellant prior to his departure from Pakistan as having been made 'to a person who is not the appellant

in Pakistan.' It is asserted that the remittances 'were, in fact, in the appellant's own name.' I have considered the evidence which was before the First-tier Tribunal. At page 81, there is a Western Union document which is illegible. On pages 82 and 83, there are two further Western Union documents which show an individual with the appellant's name as the receiver of payment. On pages 85 and 86, there are details of numerous transfers via Moneytrans. The earlier transfers in 2009 and 2010 are in the name of a Wasif Butt but the vast majority of subsequent payments do not show the appellant as recipient. The assertion made in the grounds and written submissions of the appellant that the payments 'were in fact the appellant's own name' are not, therefore, confirmed by an examination of the documentary evidence. The judge's comment that 'most' of the transfers are to a person other than the appellant is, upon my reading of the evidence before the tribunal, wholly accurate.

6. The second ground of appeal asserts that the judge had found at [24] that there 'may be some element dependency at the date of the hearing' given evidence that sponsor an appellant are now living together in the United Kingdom. The appellant asserts that, on the basis of that finding, the judge should have allowed the appeal by reference to regulation 8 (2) (b) (ii) of the Immigration (European Economic Area) Regulations 2016. The problem with that submission is that the case had never been advanced before the First-tier Tribunal on such a basis; indeed, at [18], the judge had recorded, after setting out the provisions of regulation 8, that 'Mr Martin [counsel for the appellant] correctly conceded that the appellant cannot satisfy the regulations even on his own account.'

7. In the light of what I say above, I find the appeal should be dismissed. I accept that the decision is, in part, not well expressed but I am satisfied that the judge was aware of the relationship which the appellant claimed he had with the sponsor and upon the basis of which he had made his application. I do not find that the judge has imposed too high a threshold or standard of proof having misunderstood the nature of the relationship; rather, I find that the judge determined this appeal in full understanding of the basis upon which it was put before him. I find that the judge was not wrong to state that 'most' of the money transfers which are copied in the appellant's bundle showed a recipient other than the appellant.

Notice of Decision

This appeal is dismissed.

Signed Date 16 September 2020

Upper Tribunal Judge Lane