Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number EA/06513/2019 (V)**

THE IMMIGRATION ACTS

Heard by *Skype for Business* **Decision & Reasons Promulgated**
On 31 March 2021 **On 22 April 2021**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ASIF KHURSHID

Appellant

and

IMMIGRATION OFFICER

Respondent

For the Appellant: *Mr K Forrest, Advocate, instructed by Marks & Marks, Solicitors, Harrow*
For the Respondent: *Mr C Tan, Senior Home Office Presenting Officer*

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 7 April 1988. On 14 November 2019 the respondent refused him admission to the UK under the Immigration (EEA) Regulations 2016 and revoked his residence documentation on the grounds that he had ceased to be dependent on his cousin and was not the dependent extended family member of an EEA national with the right to reside in the UK.

2. FtT Judge Conway dismissed the appellant's appeal by a decision promulgated on 23 April 2020.

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3. The appellant argued in the FtT that it was irrelevant, in terms of the regulations, whether dependency ceased once a residence card was issued.

4. The FtT Judge at [20 – 26] set out relevant parts of the regulations. He referred to *Lim v ECO* [2015] EWCA Civ 1383 and to *Flora Mar Reyes* C-423/12. At [30-36] he found it "patently clear" that there was no longer any dependency. He saw no support in *Reyes* for the proposition that extended family members did not need to continue to be dependent. He concluded that the evidence for the appellant lacked credibility, and that the decision to revoke was proportionate.

5. The appellant sought permission to appeal to the UT, on the grounds that there is no requirement for financial dependency to continue, and alternatively that the FtT gave "little or no reason" for doubting credibility.

6. Designated FtT Judge McClure refused permission on 11 June 2020, on the view that the dependency issue was settled by *Chowdhury* [2020] UKUT 00188, and the FtT's reasoning was not shown arguably to be flawed.

7. The appellant applied to the UT for permission, adding to the grounds that *Chowdhury* is a distinct case, and that *Reyes* established that there is no need for dependency to continue.

8. UT Judge Kebede granted permission on 19 August 2020, and gave directions enabling submissions to be made.

9. Written submissions for the appellant, dated 1 September 2020, do not add to the grounds. The appellant asks for the decision to be set aside and remade in the UT as "there is no dispute on the material facts."

10. A submission and rule 24 response for the SSHD, dated 29 October 2020, notes that "the underlying facts are not challenged", including the lack of continuing dependency and the finding that neither appellant or sponsor presented as impressive witnesses, and says that *Chowdhury* is "largely dispositive of this appeal".

11. Mr Forrest submitted along the lines of both sets of grounds. His principal further points were:

    (i) While *Lim* and *Chowdhury* were at first sight against the appellant, on closer inspection both cases were about initial not continuing dependency, and not in point.

    (ii) Alternatively, the FtT was wrong to hold that dependency came to an end, or should have accepted that dependency resumed through the appellant becoming a member of the sponsor's household.

    (iii) The outcome should be reversed.

    (iv) If remitted to the FtT, the case should be listed for preliminary consideration of the impact of repeal and replacement of the regulations following withdrawal from the EU.

12. Mr Tan submitted thus:

    (i) The crucial point was settled by regulation 8 (2); the beginning and end of the case was that the appellant ceased to be dependent.

    (ii) *Chowdhury* confirmed that reading of the regulations.

    (iii) *Reyes* says nothing to the contrary.

    (iv) Further support for the respondent is to be found in *HS (EEA: revocation and retained rights) Syria* [2011] UKUT 00165 (IAC) and in *Sannie and another v SSHD* [2013] EWCA Civ 1638.

    (v) On the alternative case, the grounds made no coherent challenge to the adverse credibility findings.

13. In response, Mr Forrest sought to distinguish *HS* and *Sannie*.

14. I reserved my decision.

15. Reading the regulations as far as they apply to this case:

> under regulation 7 an extended family member is to be treated as a family member of an EEA national, provided that he continues to satisfy the conditions in regulation 8(2);
>
> regulation 8 (2) (b) (ii) defines an extended family member as one who "has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household"; and
>
> regulation 24 (5) (a) provides that an immigration officer may, at the time of a person's arrival in the United Kingdom, revoke that person's residence card if the person is not at that time the family member of the EEA national.

16. The regulations support the FtT's decision, without clarification from case law. They require dependency of an extended family member to continue, and to exist at the time of a person's arrival in the UK. There is nothing in the regulations to limit that requirement to the time of first application, or of first arrival.

17. *Chowdhury* arose under the 2006 not the 2016 regulations, and the facts were not the same. Its crux was that the words "and continues to be dependent" required an applicant to establish that there had not been a break in their dependency on the EEA national sponsor.

18. I have not been referred to anything in *Reyes*, or elsewhere, which requires the regulations to be interpreted in anything but their obvious sense.

19. While preparing this decision, I notice a hint in the first set of grounds that the FtT should have declined to uphold the decision of the Immigration Officer and should not have applied the regulations because they are not in accordance with EU

Directive 2004/38. This line of argument appears again, referring to general recitals in the Directive, in the second set of grounds. It was not put to Judge Conway, and was not mentioned by either representative before me, so I take that no further.

20. The alternative case, challenging the judge's adverse credibility findings, is confused. The appellant has not begun to show that the judge's factual conclusions were not open to him for the reasons he gave.

21. The state of the evidence was such that it is difficult to see that any judge might have found differently on the facts.

22. The decision of the First-tier Tribunal shall stand.

23. No anonymity direction has been requested or made.

Hugh Macleman

13 April 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.