



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/22033/2014

THE IMMIGRATION ACTS

Heard at : Field House

On: 11 November 2014

Determination

Promulgated

On: 12 November 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MUHAMMAD REHAN

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr N Ahmed, instructed by Justmount & Co Solicitors

For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Pakistan born on 12 March 1987, has been given permission to appeal against the determination of the First-tier Tribunal, dismissing his appeal against the respondent's decision to refuse to issue him with a residence card under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

2. The appellant is considered by the respondent to have entered the United Kingdom on a two year spouse visa issued in Islamabad and valid from 18

October 2005 until 18 October 2007. On 22 October 2007 he applied for leave to remain outside the immigration rules on compassionate grounds, but his application was refused on 7 December 2007. On 17 December 2007 he made an application for leave to remain on the basis of his human rights, but that application was refused on 15 December 2008. He was served with an IS.151A notice. On 5 April 2012 he claimed asylum but subsequently withdrew his claim in April 2014, after making an application on 28 April 2014 for a residence card as the extended family member of his uncle, a Belgian national.

3. The appellant's application was refused on 14 May 2014 on the grounds that there was no evidence of financial dependency upon, or residence with, the EEA national sponsor either prior to or subsequent to his entry to the United Kingdom. It was also considered that there was no evidence that his uncle was exercising treaty rights as a qualified person. The respondent went on to consider Article 8 but concluded that removal was proportionate. The appellant, having come to the United Kingdom as a spouse, had provided no evidence to support his claim to have been the victim of domestic violence from his spouse and no evidence of his relationship with his uncle and his claimed dependency upon his uncle.

4. The appellant appealed against that decision and his appeal was heard on 7 August 2014 by First-tier Tribunal Judge Martins. The judge was not satisfied that the appellant's relationship to his EEA sponsor had been established or that the EEA national was exercising treaty rights in the United Kingdom. Neither was she satisfied that prior and present dependency upon the EEA sponsor had been demonstrated. She considered that the appellant had manipulated the 2006 EEA regulations in order to remain in the United Kingdom and concluded that the respondent's decision was in accordance with the law and the immigration rules. She dismissed the appeal.

5. Permission to appeal that decision was sought on the grounds that the judge had failed to take into account the fact that the appellant had had no entitlement to work and had therefore been dependent upon his uncle and had failed to make findings on Article 8.

6. Permission to appeal was granted on 29 September 2014 on the grounds that the judge had arguably erred by not determining the appellant's Article 8 claim.

Appeal hearing and submissions

7. At the hearing I heard submissions on the error of law.

8. Mr Ahmed submitted that there was sufficient evidence before the judge to demonstrate the relationship between the appellant and his uncle. The fact that the appellant was not working was sufficient evidence in itself to demonstrate that he was financially dependent upon his uncle. The question of whether the EEA national was exercising treaty rights was not in issue. The judge's reasons for finding that the appellant could not meet the requirements

of the EEA regulations were inadequate. With regard to Article 8, the judge erred by failing to consider the appellant's claim in that respect. Mr Ahmed accepted that the appellant could not meet the requirements of the private and family life immigration rules but submitted that there were compelling reasons for leave to be granted outside the rules, namely his length of time in the United Kingdom, his relationship with his uncle and the EU element of his case.

9. Ms Kenny submitted that the judge had given full reasons for concluding that the appellant could not meet the requirements of the EEA regulations. The fact that the appellant was not working was an insufficient basis to conclude that the burden of proving dependency had been established. With regard to Article 8, there was no material error of law as the appellant had not established a private or family life in the United Kingdom and there was no basis upon which the claim could have succeeded on the evidence produced.

10. Mr Ahmed informed me that the appellant's uncle was present and wished to give oral evidence as he had not had an opportunity to do so before the First-tier Tribunal. However I considered that the error of law could be dealt with without oral evidence and pointed out to Mr Ahmed that the judge's refusal to adjourn the proceedings because the appellant's uncle had had to leave early before giving any evidence had not been challenged.

11. I advised the parties that, in my view, there was no error of law in the judge's decision. My reasons for so concluding are as follows.

Consideration and findings

12. Mr Ahmed asserted in his submissions that the judge failed to give adequate reasons for finding that the requirements of the EEA regulations had not been met. However that is clearly not the case.

13. At paragraphs 39 and 40 of her determination Judge Martins, having set out in detail the evidence before her, gave clear and cogent reasons why she found the appellant to be lacking in credibility and why she considered there to be insufficient evidence to demonstrate the claimed relationship between himself and his EEA national. She was entitled, for the reasons given, to conclude that the family tree relied upon by the appellant did not adequately demonstrate the claimed relationship and noted the absence of further supporting evidence such as birth certificates.

14. At paragraph 41 the judge gave clear and cogent reasons for concluding that the appellant had failed to show that his sponsor was a qualified person under the EEA regulations. Mr Ahmed submitted that that was not an issue before the judge, but it is clear from the respondent's refusal letter that the sponsor's status under the regulations, as a self-employed person, was not accepted, albeit that that was addressed in the section relevant to Article 8 of the ECHR. The judge was accordingly perfectly entitled to make the findings that she did in that respect.

15. At paragraph 42 of her determination the judge went on to find, for reasons clearly and cogently given, that the appellant had failed to demonstrate the required dependency upon his uncle either prior to or since coming to the United Kingdom. I find no merit in Mr Ahmed's submission that the fact that the appellant was not working was in itself sufficient to demonstrate dependency upon his uncle. There was plainly a lack of satisfactory evidence before the judge to meet the burden of proof upon the appellant and she was entitled to reject his claim for the reasons given.

16. In the circumstances it seems to me that the judge was perfectly entitled to reach the conclusions that she did on the evidence before her. Her finding, that the appellant was an entirely unreliable witness and had been dishonest in his manipulation of the EEA regulations, was one that was open to her on the evidence and was supported by clear and cogent reasons.

17. With regard to Article 8, the judge was plainly aware of the grounds relating to that claim, as specifically referred to at paragraph 15 of her determination. Whilst she did not make any specific findings in that regard, it is plain from her conclusion at paragraph 45 that the respondent's decision was in accordance with the law and the immigration rules, that she found the claim not to have been made out. In any event there was no basis upon which the appellant could have succeeded in such a claim on the evidence before the judge. The judge did not accept that the appellant was related to the EEA national and in any event found there to be no dependency. There was accordingly no evidence before her of family life established in the United Kingdom. Mr Ahmed properly accepted that the appellant could not meet the requirements of the family and private life immigration rules. There was nothing further in the evidence before the judge to consider in the context of Article 8 outside the rules and certainly nothing demonstrating any exceptional or compelling circumstances justifying a grant of leave.

18. With regard to Mr Ahmed's submission that the EEA national ought to be given an opportunity to give evidence to demonstrate a basis for an Article 8 claim, it is clear that he had such an opportunity before the First-tier Tribunal but chose instead to leave the hearing early. There has been no challenge to the judge's decision not to adjourn the proceedings to enable him to give evidence on another occasion and indeed such a decision was properly made.

19. For all of these reasons I find that the judge's decision was a detailed and careful one, including a full assessment of all the evidence and cogently reasons findings that were properly open to her on the evidence before her and that it contains no errors of law.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed
Upper Tribunal Judge Kebede
2014

Dated: **11 November**