



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17473/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 9th December 2014

Determination Promulgated
On: 4th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Muhammad Irfan Hanif
(no anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Timson, Counsel instructed by Marks & Marks Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 6th December 1987. He appeals with permission the decision of the First-tier Tribunal (Judge Pickup) to dismiss his appeal against the Respondent's decision to refuse to issue him

with a residence card confirming his right of residence as an extended family member of an EEA national exercising treaty rights¹.

2. The basis of the Appellant's case was that he is dependent upon his aunt, Mrs Rubina Shaheen. Ms Shaheen is an Italian national living in the UK. The Appellant has been receiving treatment in the UK for Hodgkins Lymphoma and heart failure: in this regard he further relies on Regulation 8(3) to claim that he is strictly dependent on his aunt for personal care. His illnesses also founded the basis for a submission that his removal from the UK would be a disproportionate interference with his Article 8 rights and a breach of Article 3.
3. The First-tier Tribunal first considered the Appellant's case under the Immigration (European Economic Area) Regulations 2006 ('the Regs'). The Tribunal correctly referred itself to the decision in Dauhoo (EEA Regs 8(2)) [2012] UKUT 79 (IAC). That case clarifies the requirements for an applicant claiming a right of residence as an extended family member. The headnote to that decision reads as follows:

Under the scheme set out in reg 8 (2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an "extended family member" in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK:

- i. prior dependency and present dependency
- ii. prior membership of a household and present membership of a household
- iii. prior dependency and present membership of a household;
- iv. prior membership of a household and present dependency.

It is not necessary, therefore, to show prior and present connection in the same capacity: i.e. dependency- dependency or household membership-household membership ((i) or (ii) above). A person may also qualify if able to show (iii) or (iv).

4. Following that framework the Appellant relied on (ii) and (iv): prior membership of a household and present membership of a household plus present dependency.
5. The First-tier Tribunal found that the Appellant had failed to demonstrate that he was currently dependent upon his aunt. That was because he had been living with his elder brother since 2007, even when he was briefly married to a Czech national. The evidence indicated that if anyone, it was his brother who was supporting him financially rather than his aunt. There was evidence that his brother was no longer able to offer such support, and

¹ Decision dated 3rd April 2014

so they had all become reliant on the financial support of Ms Shaheen; Judge Pickup rejected this evidence as “contrived” and did not accept that they lived on her contribution of £100 per month. Nor was it accepted that the Appellant is currently living in “her household”. She lives in the same house, but this is the home of the Appellant’s brother who has been supporting him since he arrived in the UK in 2007. As to the situation before the Appellant left Pakistan, Judge Pickup did not accept that the Appellant had there been part of her household. The evidence was that the Appellant, his sister, his parents and Ms Shaheen had all lived in a ‘joint family system’ in a house owned by his grandfather. That house had, at some point, been transferred into Ms Shaheen’s name, on the basis that she was not married, but the period in which she might be said to have become the nominal head of the household by virtue of that ownership predated her migration to Italy and acquisition of Italian nationality. Applying Moneke (EEA- OFM) Nigeria [2011] UKUT 00341 (IAC) the Tribunal held that the Appellant cannot rely on membership of the same household prior to Ms Shaheen becoming an EEA national. In respect of Regulation 8(3) the Tribunal found there to be insufficient evidence to support a finding that the Appellant strictly required his aunt’s care: he is fully mobile, his cancer is now in remission and he attends occasional outpatient appointments.

6. As for human rights the medical evidence did not support a finding that that the Appellant’s removal would violate Article 3. At the hearing the Tribunal indicated that if the Appellant wished to rely on Article 8 consideration would have to be given to s117A-s117D of the Nationality, Immigration and Asylum Act 2002. There was no removal decision; if the Appellant wished to make an application on Article 8 grounds he could do so. Given that indication Mr Timson, who appeared for the Appellant, made no submissions.
7. The First-tier Tribunal dismissed the appeal on all grounds.
8. The Appellant’s initial application for permission to appeal was refused but was granted upon renewed application by Upper Tribunal Judge Warr. The Appellant was granted permission to argue the following points:
 - i) The finding that the evidence of the family as to present dependency was “contrived” was not supported by reasoning and there was a failure to take evidence into account;
 - ii) The finding that the Appellant and his aunt were not members of the same “household” (in both Pakistan and the UK) was not supported by reasoning, particularly since it was accepted that they did live in the same house.

No Error of Law

9. Under Reg 8(2) the Appellant must show that two of four possible means of qualification apply to him.
10. I deal with the UK first. It was the Appellant's case that he is a member of the same household as his aunt in the UK *and* that he is dependent upon her. Judge Pickup heard evidence that the Appellant came to the UK in 2007 as a student. He then made an EEA residence card application to be able to reside with a Czech national whom he had married. This application was unsuccessful, as was a subsequent one on the same basis, and by December 2012, a little over a year after that initial application, he withdrew his appeal. Throughout that entire period he lived with his brother. His aunt did not come to the UK until October 2013. She moved in to the same house where the Appellant had been living all along with his brother and his family. It was on this basis that Judge Pickup found the Appellant to be part of his brother's household rather than that of his aunt (see para 30). The grounds suggest that there was no legal basis for that distinction and that the mere fact of living under the same roof is sufficient. The grounds contain no authority for that proposition, which is contrary to the plain wording of the Directive:

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

- (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of **the household of the Union citizen** having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

As well as the Regulations:

8. – (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

- (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 residing in an EEA State in which the EEA national also resides and is 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.

11. The determination itself refers to KG (Sri Lanka) [2008] EWCA Civ 13 and Bigia & Ors [2009] EWCA Civ 79, both of which reflect those plain words – the household must be that of the EEA national. I find that the First-tier Tribunal was entitled, on the evidence before it, to conclude that the Appellant was in fact a member of his brother’s household. The fact that his aunt had latterly moved into the same house did not make it “her household”.
12. As for present dependency, reasons are given for why the evidence was found to be “contrived”. The Appellant’s case was that his dependency upon his brother had ceased because his brother’s business had gone “down and down” and had eventually closed. The grounds complain that the Tribunal failed to mention documentary evidence to the effect that the business had in fact closed down. There is nothing in this, since the determination does not appear to doubt that it did close down: the point is that Judge Pickup finds that entire situation to have been contrived for the purpose of supporting the Appellant’s claim to be dependent upon his aunt. The evidence of the witnesses on this matter was “not entirely credible” and that of the brother in particular was found to be “vague and inconsistent”. It was not accepted that Ms Shaheen’s £100 per month contribution to the household budget of was in reality supporting the Appellant. I can find no error in the reasoning in respect of the position in the UK.
13. As to the question of “household” in Pakistan the determination contains the following finding: “Until October 2013 he last lived with his aunt when she was part of a larger joint family system in Pakistan in 1999, when the appellant was no more than 12 years of age and part of his parental family with his sister”. It was on that factual basis that the Tribunal determined that the Appellant was not part of his aunt’s household in Pakistan. The fact that at some point she inherited the title to the property did not make her the head of that household. More importantly the Tribunal finds against the Appellant on the ground that it is quite plain that at the time that the Appellant was living in that house – owned by his aunt – she was not an EEA national. He left Pakistan in 2007 and the evidence before the Tribunal suggested that she did not become an EEA national until 2013. There is no error of law in respect of these findings.
14. The written grounds raise no issue as to the findings on Reg 8(3) but in his oral submissions Mr Timson nevertheless dealt with this aspect of the

determination. Mr Timson submits that no reasons are given for the conclusion that the Appellant does not strictly require his aunt's assistance for his personal care. Reasons are given. It is found that although the Appellant has obviously been extremely unwell in the past, he is now in remission and doesn't require any help with anything apart from perhaps a lift to his outpatient appointments. There was no credible medical evidence to show that the Appellant needed any personal care. The brother's evidence that he "did not have time" to give the Appellant a lift to the hospital even though he was unemployed was very fairly dismissed as "not credible".

Decisions

15. The determination of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
1st February 2015