



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

Appeal Number: IA/27118/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th March 2015**

**Decision & Reasons Promulgated
On 27th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**MUHAMMAD RASHID KHAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood of Counsel instructed by Maxim Solicitors
For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Foudy promulgated on 30th September 2014.
2. The Appellant is a male citizen of Pakistan born 11th April 1979 who applied in May 2014 for a residence card as the extended family member of an EEA national. The

application was based upon his relationship with his cousin Khalida Amjad and her husband Amjad Wali who are both Belgian nationals.

3. The application was refused on 26th June 2014 with reference to Regulation 8(2)(a) and (c) of The Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) which are set out below;

8.2 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 a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;
- (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.

4. The Respondent did not accept that the above conditions were satisfied, nor was it accepted that the EEA Sponsor was a qualified person as defined in Regulation 6 of the 2006 Regulations. The application was therefore refused both with reference to Regulation 8(2) and Regulation (6).
5. Judge Foudy (the judge) heard the appeal on 26th September 2014. The judge found that the Appellant is the cousin of Ms Amjad and that she and her husband are Belgian citizens, and Mr Wali was exercising treaty rights in the United Kingdom as a self-employed decorator.
6. The judge did not find that the Appellant had been maintained by the EEA Sponsor prior to coming to the United Kingdom and was not satisfied that there was evidence of current dependency, and the appeal was therefore dismissed.
7. The Appellant was granted permission to appeal by Judge McWilliam and I set out below the grant of permission, in part, which summarises the grounds contained in the application;

“2. There is an arguable error of law because it is not apparent that the judge considered prior membership of a household and present membership of a household and instead it is arguable that she considered the issue of dependency only (see Dauhoo [2012] UKUT 79).

3. It is not clear to me when the Sponsor started exercising treaty rights, but this can be clarified at the forthcoming hearing.

4. There are two other files with this one. IA/31211/2013 relates to the Appellant’s wife and IA/31212/2013 relates to the Appellant. It appears they both made joint applications to remain under Appendix FM and their appeals were dismissed and permission refused”.

8. The appeal came before me on 23rd January 2015. I found that the judge had erred in law by not taking into account the principles in Dauhoo, the head note of which is set out below;

“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). “

9. The judge only considered the issue of dependency and did not consider prior or present membership of a household and made no findings on this. For that reason the decision had to be set aside.
10. I found that the following findings had not however been challenged and were therefore preserved;
 - (a) Mr Wali and Ms Amjad are Belgian citizens and are related as claimed to the Appellant.
 - (b) At the date of the First-tier Tribunal hearing Mr Wali was exercising treaty rights in the United Kingdom as a self-employed decorator.
 - (c) Ms Amjad and Mr Wali falsely claimed in their witness statements that they had never claimed any public funds or benefits in the United Kingdom to support their family.
 - (d) There is insufficient evidence to prove that the Appellant was dependent upon an EEA national prior to coming to the United Kingdom, and insufficient evidence to prove that the Appellant continues to be dependent upon an EEA national.
11. The hearing was adjourned for further evidence to be given in relation to membership of the household of an EEA national prior to arriving in the United Kingdom, and current membership of the household of an EEA national.

Re-making the Decision - Upper Tribunal Hearing 18th March 2015

Preliminary Issues

12. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle with Annexes A-J, and the Appellant's bundle comprising 238 pages. These bundles had been before the First-tier Tribunal.
13. I received from Miss Johnstone, without objection, a copy of the Appellant's application for entry clearance as a spouse made on 2nd September 2004, together with a copy of form ICD1989, and details of the immigration history of the Appellant's wife Farhad Alauddin Shaikh, and the Appellant's immigration history, and the reasons for refusal letter addressed to Ms Shaikh, following her application

for leave to remain in the United Kingdom on the basis of her family and private life with the Appellant.

14. Both representatives confirmed that they had received a copy of my error of law decision dated 28th January 2015 which set out the preserved findings, and the issues to be considered at this hearing.
15. Both representatives indicated that they were ready to proceed and there was no application for an adjournment.

The Evidence

16. I heard evidence firstly from the Appellant, secondly from his cousin Khalida Amjad, and thirdly from her husband Amjad Wali. All gave evidence with the assistance of an interpreter in Urdu. I am satisfied there was no difficulty in communication. The Appellant and his witnesses did not rely upon the witness statements they had previously made. I have recorded all questions and answers in my Record of Proceedings and will not repeat them in full here. I set out below a summary of the evidence.
17. The Appellant stated that he had lived with Khalida Amjad and Amjad Wali in Pakistan before coming to the United Kingdom. In answering questions put by Mr Mahmood, the Appellant said that he lived with his cousin in rented accommodation in Pakistan from 2002 but for the first two years there was no rental contract and thereafter a rental agreement was signed. There is a rental agreement at pages 205-206 of the Appellant's bundle dated 1st January 2004 showing that a property at 33 Lala Zaar Colony, Mansehra Road, Abbottabad was rented to the Appellant and Amjad Wali for a period of twelve months until 1st January 2005.
18. The Appellant confirmed that he lived at that address until 2005. He confirmed that Khalida Amjad and Amjad Wali travelled from Belgium to live in the United Kingdom in 2011.
19. Cross-examined the Appellant stated that Khalida Amjad became a Belgian citizen in 2009 and Amjad Wali in 2007. Khalida Amjad left Pakistan to live in Belgium in January 2005.
20. As to the wedding of Khalida and Amjad this took place in Pakistan. The couple wanted to live independently which is why they took on the rented property, and the Appellant started living with them.
21. The Appellant stated that Amjad went back to Belgium shortly after the wedding and only returned to Pakistan once in 2004 before Khalida joined him in Belgium in January 2005.
22. The Appellant accepted that the address of the rented property is not the address shown on his Pakistani passport at that time, neither was it the address that he gave when he made his application for entry clearance on 2nd September 2004.
23. The Appellant then said that he moved into the rented property at 33 Lala Zaar Colony in January 2004. It was pointed out that previously he had said that he lived there without a rental agreement for two years prior to January 2004, and he then changed his evidence to say that prior to January 2004 he had in fact lived at the

same household as Khalida Amjad in an uncle's property but there was no contract to prove that. He described this property as belonging to Mr Khan. He admitted that he had never previously mentioned this because he did not have any documents to prove that he lived there.

24. The Appellant said that Khalida left Pakistan to live in Belgium in January 2005 and he moved to the United Kingdom on 26th February 2005. He accepted that in March 2012 he had made an application for leave to remain based upon his relationship with Farhad Alauddin Shaikh. He said Ms Shaikh lived alone in London, and subsequently he admitted that they had married in 2012 and that they have a son born in the United Kingdom on 11th May 2013. The Appellant confirmed that he had entered the United Kingdom as the spouse of a person settled here but had divorced his first wife, and started a relationship with Ms Shaikh in 2007. He visited her every two or three weeks, having stopped living with her in London and moved to live with his cousin and her husband when they arrived in the United Kingdom in October 2011.
25. There was no re-examination and in answer to some questions that I put, the Appellant thought that his cousin married in Pakistan in June or July 2002 but was not sure. He confirmed that he had been living with Ms Shaikh in 2011 and then moved to live with his cousin and her husband because of financial difficulties.
26. Giving evidence-in-chief, Khalida Amjad confirmed that the Appellant started living in her household after her wedding which took place in Pakistan in October 2002. They started living together at 33 Lala Zaar Colony. Khalida left Pakistan to live in Belgium on 12th January 2005. She and her husband moved from Belgium and started to live in the United Kingdom on 16th October 2011. After their arrival in this country the Appellant started living with them.
27. When cross-examined, Khalida indicated that she became a Belgian citizen in 2009 and her husband became a Belgian citizen in 2007. They have four children who live with them.
28. Khalida stated that her husband stayed in Pakistan living with her for approximately three weeks after their wedding. He subsequently visited Pakistan two or three times including a visit in January 2005 when he took her back to Belgium.
29. She believed that her husband had visited Pakistan in 2004 but could not remember when. It was put to the witness that the Appellant had stated they started living at 33 Lala Zaar Colony in January 2004 whereas she had indicated that they lived there straight after her wedding in October 2002. She changed her evidence to indicate that they had lived in another property before January 2004 and she had initially been confused in giving different evidence about this, and also there was no contract to prove where they were living before January 2004. She explained that she and her husband took on the rented property because they wanted to live independently from their families after their wedding.
30. There was no re-examination and I asked where the witness had lived before moving into the rented property at 33 Lala Zaar Colony and she said she lived with a cousin who she knew as Mr Khan. She did not know his full name or his address.

She explained that in Pakistan it is the custom to respect elders and one did not need to know their full name. The witness stated she had lived with her husband in Pakistan after their marriage but was unable to give details of where or when.

31. Amjad Wali gave his evidence-in-chief stating the Appellant had been a member of his household in Pakistan since 2002 and they had lived at 33 Lala Zaar Colony. Mr Wali and his wife had moved to the United Kingdom from Belgium in October 2011, and the Appellant had started living with them in this country. Mr Ali confirmed that the Appellant had a friend who he visited in London, but when he was asked whether the Appellant was married he admitted that he was.
32. When cross-examined, Mr Wali stated that he lived in Pakistan for approximately one month after his marriage in October 2002. He visited Pakistan after his marriage on three or four occasions before his wife came to live in Belgium with him. When asked why he had referred to a friend of the Appellant rather than the Appellant's wife, he said he meant to say girlfriend. He is aware that the Appellant and his wife have a son.
33. There was no re-examination and in answer to questions that I put, Mr Wali confirmed that he had lived in Pakistan after his marriage for approximately three weeks. He said that he and his wife spent their time in Islamabad at his brother's house. He then returned to Belgium.
34. He said that he returned to Pakistan in 2003 for two or three weeks staying at 33 Lala Zaar Colony. He then changed his evidence to say that he had not stayed at that address, but had resided at his uncle's property but he did not know the address.
35. Mr Wali then said that he had returned to visit Pakistan on two or three separate occasions in 2003. On the first visit he had stayed at his uncle's address, who he named as Sardar Aftab. He said the Appellant was also living there. He did not know the address, but he stayed there again on his next visit in June and July 2003 when he stayed for approximately twelve days. The Appellant was also at that address. Mr Wali visited Pakistan again in December 2013 staying at the same address, and then visiting Islamabad.
36. He said that he did not visit Pakistan in 2004, but then said he was not sure. He thought he had stayed for a few days at 33 Lala Zaar Colony but could not recall when.

The Respondent's Submissions

37. Miss Johnstone reminded me that Mr Wali and Ms Amjad had been found to be untruthful before the First-tier Tribunal and that the finding had been preserved. I was asked to note the lack of reliable documentary evidence and Miss Johnstone submitted that the oral evidence given today was wholly unreliable, inconsistent and vague.
38. I was asked to note the significant differences in the evidence given and to note it was accepted that neither Ms Amjad nor Mr Wali were Belgian citizens when it is contended that they lived with the Appellant in Pakistan.

39. Miss Johnstone did not make any submissions in relation to Article 8 of the 1950 European Convention on Human Rights (1950 Convention), as Mr Mahmood indicated this was not being pursued.

The Appellant's Submissions

40. Mr Mahmood confirmed that there was no reliance on Article 8.
41. Mr Mahmood submitted that the appeal should be allowed under the 2006 Regulations. I was asked to find that the evidence indicated that following the marriage of Ms Amjad and Mr Wali, the parties lived together at a relative's house before moving into the rented accommodation at 33 Lala Zaar Colony on 1st January 2004. Mr Mahmood accepted that there were inconsistencies in the evidence, but contended that in the main it was similar. Mr Mahmood accepted the evidence proved that Ms Amjad did not become a Belgian citizen until 2009, and Mr Wali until 2007, stating that he could make no oral submissions on this issue, it was the Appellant's case that he had lived with them in Pakistan prior to them becoming EEA citizens.
42. In relation to the United Kingdom, Mr Mahmood submitted that the evidence is consistent and proved that the Appellant had been a member of the household of an EEA national in this country, after Mr Wali and Ms Amjad arrived in October 2011.
43. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

44. Because of the preserved findings, the issue before me is relatively narrow, and relates to whether the Appellant can prove that he is an extended family member of an EEA national, by reason of his prior membership of the household of an EEA national, and by his present membership of such a household. The issue of dependency is not before me, and there is no reliance upon Article 8 of the 1950 Convention.
45. The burden of proof is on the Appellant, and the standard of proof is a balance of probabilities.
46. I do not accept the Appellant and the two witnesses who gave evidence, as credible or reliable witnesses.
47. I do accept that Amjad Wali left Pakistan to live in Belgium in 1992. He returned to Pakistan to marry Khalida Amjad in October 2002. He stayed in Pakistan for approximately three weeks after his wedding before returning to live in Belgium.
48. In January 2005 Khalida Amjad joined him in Belgium. On 26th February 2005 the Appellant left Pakistan and commenced living in the United Kingdom as the spouse of a person settled in this country. That marriage subsequently ended in divorce.
49. In relation to the evidence presented to me, neither the Appellant nor his witnesses relied upon their witness statements, but relied upon oral evidence. There were inconsistencies in the evidence as to where the parties were living in Pakistan, and there were changes of evidence.

50. The inconsistencies and the changes to the evidence are set out in the evidence which is summarised earlier. I do not accept that Amjad Wali had a household in Pakistan, where he had not lived since 1992. It has not been proved where Khalida Amjad lived after her wedding nor where the Appellant lived. I do not accept that the Appellant was living in the household of an EEA national. Neither Amjad Wali nor Khalida Amjad were EEA nationals while the Appellant lived in Pakistan. Amjad Wali became a Belgian citizen in 2007, Khalida Amjad in 2009. Taking the Appellant's case at its very highest, it is therefore clear that he did not live in the household of an EEA national before he left Pakistan on 26th February 2005.
51. Miss Johnstone made the point that reliable documentary evidence had not been submitted. The only documentary evidence purported to be relevant as to where the parties lived was a tenancy agreement dated 1st January 2004 which indicated that on that date a tenancy had been taken out by Amjad Wali and the Appellant on the property at 33 Lala Zaar Colony, Mansehra Road, Abbottabad. This document has been produced by the Appellant, it is for him to show that it is reliable, and I must consider whether the document is reliable, having taken into account all the evidence in the round. This I have done.
52. I do not find that reliance can be placed upon that tenancy agreement. There was conflicting evidence as to when Amjad Wali had returned to Pakistan from Belgium. The Appellant and Ms Amjad gave inconsistent and conflicting evidence as to when they contended they had started living at 33 Lala Zaar Colony, having at one stage stated that they lived there immediately following the wedding in October 2002, and then subsequently changing their evidence to state that at that time they lived with another relative whose full name they did not know and whose address they did not know, before starting to live at 33 Lala Zaar Colony. The inconsistencies in the evidence go to the core of the account and are material. I do not find that reliance can be placed upon the tenancy agreement.
53. In my view, it is clear that the Appellant did not live in the household of an EEA national before leaving Pakistan. I do not accept that he lived in the household of either Khalida Amjad or Amjad Wali, and in any event at that time they were not EEA nationals. The Appellant therefore cannot satisfy the requirements of Regulation 8(2) of the 2006 Regulations and the appeal must therefore fail.
54. Even though the appeal cannot succeed I will go on to consider the evidence in relation to the claim that the Appellant is presently the member of a household of an EEA national. I do not find this to be credible. The Appellant accepts that in March 2012 he made an application for leave to remain in the United Kingdom on the basis of his relationship with Farhad Alauddin Shaikh who he married in that year. I do not accept as credible his claim that in 2011 when he was living with Ms Shaikh, with whom he claimed to have been in a relationship since 2007, he left her to go and live with his Belgian cousin and her husband. No satisfactory, or adequate explanation has been given as to why he would move. I note that the application for leave to remain was refused on 4th July 2013. Although the Respondent accepted that the Appellant was in a genuine and subsisting relationship with Ms Shaikh, the application did not satisfy the requirements of Appendix FM of the Immigration Rules, and it was felt that there would be no breach of Article 8. The Appellant had

no right of appeal, as he did not have leave to remain in the United Kingdom, but Ms Shaikh appealed to the First-tier Tribunal and her appeal was dismissed, and permission to appeal refused.

55. Neither the Appellant nor his witnesses were forthcoming about his marriage, for example Mr Wali initially explained that the Appellant had a friend in London whom he visited from time to time. Subsequently he admitted that this friend was in fact the Appellant's wife with whom he had a son who was born in 2013.
56. I therefore reject the claim that the Appellant is currently a member of a household of an EEA national as I found the evidence given on this issue to be incredible and conflicting with the application that the Appellant made for leave to remain with his partner.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The appeal is dismissed.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity made to the Upper Tribunal and no anonymity order is made.

Signed

Date 20th March 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 20th March 2015

Deputy Upper Tribunal Judge M A Hall