Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06001/2014
OA/06012/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 7 October 2015	**On 26 November 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR REVAZ MTVRALASHVILI
MRS MARIAM KILADZE
(No anonymity order made)

Respondents

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondents: Mr B Halligan of Counsel instructed by Southfields Solicitors

DECISION AND REASONS

1) This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal Sullivan allowing an appeal by the respondents (hereinafter referred to as "the applicants").

2) The appeal was allowed under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). The applicants are citizens of Georgia. They appealed to the First-tier Tribunal against a refusal by the Entry Clearance Officer to grant entry clearances, or more properly family permits, to enter the UK as dependants of their daughter-in-law, who is an EEA national exercising Treaty rights in the UK.

3) The Judge of the First-tier Tribunal stated, at paragraph 25 of the decision, that the essential question was whether the applicants had the resources to meet the costs of their essential expenditure without relying on funds provided by their son and daughter-in-law in the UK. The judge accepted that the applicant's son and daughter-in-law had sent sums of money to the applicants in the period April 2013 to March 2014. These amounts varied between US Dollars 100 and 1900. The second applicant was employed as a teacher with a basic monthly salary of GEL 120. The first applicant was not in employment. The judge had regard to the applicants' living costs. The judge found that between December 2012 and December 2013 the applicants spent GEL 670 on gas and between December 2011 and September 2012 the applicants spent GEL 505.48 on electricity. The sums were found by the judge to be consistent with data relating to the cost of living in Georgia contained in the country information. In addition the second applicant was repaying a bank loan at a rate of GEL 65.20 per month, with the final payment due in November 2015. The judge found that the amount spent by the applicants on gas, electricity and loan repayments exceeded their monthly income. In order to meet their essential expenditure, such as food and clothing, they were relying on funds provided by their son and daughter-in-law in the UK and were therefore financially dependent upon them. Accordingly the applicants were to be regarded as family members of an EEA national and were entitled to the permits sought.

4) Permission to appeal was granted on the basis that it was arguable that the finding by the judge that the applicants were dependent on their son and daughter-in-law was not supported by sufficient analysis of the evidence. It was further arguable that the judge did not make clear findings in relation to the loan taken out by the applicants, the effect of which was apparently to render them reliant on funds from the UK. It was arguable that the "focus strayed away from the protected rights of EEA nationals and family members."

Submissions

5) At the hearing before me Mr Melvin submitted that the applicants' son relied on benefits in the UK. The Judge of the First-tier Tribunal had relied on the case of Lim (EEA Dependency) Malaysia [2013] UKUT437 in relation to whether home ownership should be taken into account. Mr Melvin pointed out that the decision in Lim had been overturned by the Court of Appeal in terms of an order dated 29 July 2015. Not only was the applicants' son not working at the date of the hearing but the applicants' daughter-in-law was working only part-time.

6) Mr Halligan intervened to contradict Mr Melvin's assertion that the applicants' son was not working. Mr Halligan said that according to the evidence it was the first applicant who was not working and had not been working.

7) Reference was made to paragraph 6 of the grounds of the application for permission to appeal, in which it was stated that the appeal should be dismissed in the interests of justice and fairness, immigration control and the economic well-being of the country. It was accepted by Mr Melvin that this ground had no relevance in an appeal under the EEA Regulations. Mr Melvin sought, however, to found upon paragraphs 3 and 4 of the grounds of the application for permission to appeal. In terms of Ground 3 the judge erred at paragraph 33 of the decision by speculating that the applicants had limited income and "must" be relying on funds provided by the son and daughter-in-law. At Ground 4 it was submitted that the issue of dependency goes beyond financial matters and the judge had failed to look at dependency as a whole. The applicants had not discharged the onus upon them to show that they were dependent on the sponsors. Mr Melvin continued that the judge should have looked further into the issue of dependency before finding that the income of the applicants was not sufficient to meet their expenses. This was on the basis, in particular, that the loan taken out by the second applicant was not for the purpose of essential needs.

8) Mr Melvin further submitted that the applicants' son and daughter-in-law in the UK were in receipt of child tax credits. The applicant's daughter-in-law was working only part-time. These factors should have been taken into account. The judge had failed to look at all matters in relation to dependency. Although funds were being transferred to the applicants, these were based on benefit payments made in the UK and the son and daughter-in-law were overdrawn.

9) For the applicants, Mr Halligan submitted that the grounds relied upon by Mr Melvin amounted to no more than disagreements with the decision of the Judge of the First-tier Tribunal in an attempt to get the decision overturned.

Discussion

10) The meaning of dependency in European law was considered by the Court of Justice in the case of Reyes v Migrationsverket (Case C-423/12) CJEU (Fourth Chamber), 16 January 2014. That case concerned the dependency of a relative in the descending line, rather than in the ascending line as in the present case, but the principles remain the same. Dependent status was found to be the result of a factual situation characterised by the fact that a Union citizen exercising a right of freedom of movement, or her spouse, provided material support for the relevant family member. It was necessary to assess whether, having regard to financial and social conditions, the dependant was in a position to support himself or herself, but there was no need to determine the reasons for the

dependence or for the recourse to support. This interpretation was in accordance with the principle that provisions establishing the free movement of Union citizens must be construed broadly. The fact that a Union citizen regularly and for a significant period paid a sum of money to the dependant in order to support him or her in the country of origin was enough to prove that there was a real situation of dependence. The dependant was not required to show that he or she had tried without success to find work or obtain subsistence from the authorities of the country of origin or otherwise support himself or herself.

11) These conclusions are similar to those expressed by the Upper Tribunal in an earlier decision in respect of a different individual of the same name, reported as Reyes (EEA Regs: dependency) [2013] UKUT 00314. In that case it was said that whether a person qualified as a dependant under the EEA Regulations was to be determined at the date of decision on the basis of evidence produced or, on appeal, at the date of the hearing on the evidence produced to the Tribunal. The test of dependency was a purely factual test. As submitted on behalf of the Entry Clearance Officer in this appeal, it should be construed broadly to involve a holistic examination of a number of factors. The dependency must be in the present, not in the past. The term dependency must not be interpreted so as to deprive the provision of its effectiveness.

12) In this appeal the Judge of the First-tier Tribunal made clear findings, supported by the evidence, to the effect that the applicants were dependent upon funds being sent to them by their son and daughter-in-law in the UK. The judge's findings were based in part on evidence of funds transmitted to the applicants by their son and daughter-in-law in the period from April 2013 to March 2014. As was pointed out by the Court of Justice in Reyes, the fact that a Union citizen regularly and for a significant period has been paying a sum of money to the dependant in order to support him or her in the country of origin is sufficient to prove a real situation of dependence. Accordingly, in this appeal the finding by the judge that these payments had been made was a significant factor in establishing dependency.

13) Mr Melvin argued that the judge erred by taking into account the loan repayments in relation to the applicants' needs. I note that the judge had some evidence relating to the loan. According to the applicants' daughter-in-law the loan was taken out for her sister-in-law's education, but the applicants' son in his evidence was not sure of the purpose of the loan. The judge noted, however, that the loan repayments amounted to more than half of the second applicant's basic monthly salary. In terms of the decision of the Court of Justice in Reyes, it was not necessary to determine the reasons for the dependence or for recourse to support. It was sufficient for the judge to note that the applicants had this loan to pay as well as their other expenses such as utility bills, food and clothing. Accordingly, the judge was entitled to take the loan repayments into account in considering the question of dependence.

14) Furthermore, the judge had regard to country information about the cost of living in Georgia and the amounts which would normally be paid for utilities. It cannot be said that the judge carried out anything other than a careful analysis of the evidence of the applicants' expenditure in considering the issue of dependency.

15) A further issue raised by Mr Melvin was whether the judge should have taken into account that the first applicant is a home owner in Georgia. The judge stated, at paragraph 3 of the decision, that in accordance with the case of Lim, cited above, it was not necessary to have regard to home ownership. Although Mr Melvin informed me that the decision in Lim had been overturned by the Court of Appeal, he did not put before me any judgment to show that the judge was wrong to put on one side the first applicant's home ownership.

16) In any event, I do not see how this issue would have been material. If the applicants were not living in a home owned by one of them, they would have to pay rent. This would have increased even further their monthly expenditure and therefore increased their dependency. Mr Melvin did not seek to argue that any savings realised by the sale of the house would have been available to avoid the need for dependency and, given that any such savings realised would be finite in nature and would have to be set against the costs of renting accommodation, such an argument would not seem to be material. The essential issue was whether the applicants had shown that they were in fact dependent upon their son and daughter-in-law. The judge was satisfied upon the evidence that this was so and gave adequate and sustainable reasons for these findings. The Entry Clearance Officer has not been able to show any error of law by the judge in so doing and accordingly the decision shall stand.

Conclusions

17) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

18) I do not set aside the decision.

Anonymity

19) No order for anonymity was made by the First-tier Tribunal. I have not been asked to make such an order and I see no reason of substance for making one.

Fee Award Note: This is not part of the decision

20) I have not been asked to alter the decision of the First-tier Tribunal in relation to making a fee award and I see no reason to do so.

Signed Date

Upper Tribunal Judge Deans