



IAC-FH-AR-V1

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

Appeal Number: IA/02628/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 February 2016**

**Decision & Reasons Promulgated  
On 25 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**TARUNDEEP SINGH  
(ANONYMITY DIRECTION NOT MADE)**

**Respondent**

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr J Butterworth, Counsel, instructed by S&S Immigration Law

**DECISION AND REASONS**

1. The Respondent in this appeal, who I shall refer to as the Claimant, is a national of India who came to the United Kingdom in April 2014. He then applied for a residence card as an extended family member of his sister-in-law who is an EEA national exercising treaty rights in the United Kingdom. His application was refused on 2 January 2015 because the Respondent did not accept that the Claimant met the criteria set out in Regulation 8 of the Immigration (European Economic Area) Regulations 2006.

2. The Claimant appealed against that decision and his appeal came before Judge of the First-tier Tribunal Phelan on 27 July 2015. In a decision dated 12 August 2015 the First-tier Tribunal Judge allowed the appeal having heard evidence from the Claimant, his sister-in-law, and his brother, and having considered the evidence before her, which included eight MoneyGram or Forex receipts dated from 2010 until 2014, attesting to the remittance of money by Claimant's sister-in-law and brother to him in the United States between 2010 and 2014. The First-tier Tribunal Judge expressly found that the Claimant had been dependent upon his sister-in-law while he was living in the US at [26] and whilst this had not been continuous dependence he was dependent when his income was insufficient during that four year period, and on that basis at [26] the First-tier Tribunal Judge accepted the Claimant met the criteria set out at Regulation 8(2)(a) and (c) of the Immigration (EEA) Regulations 2006.
3. The Secretary of State sought permission to appeal against this decision on 18 August 2015. The grounds of appeal asserted that the First-tier Tribunal Judge made a material misdirection in law in finding that the Claimant satisfied the requirements under Regulation 8(2). Reference was made to the decision of the Upper Tribunal in **Dauhoo [2012] UKUT 79** and it was asserted that the Claimant was unable to meet any of the four categories of case set out therein as he had never been dependent on the EEA national prior to coming to the United Kingdom. It was asserted that rather the Claimant had been supported by his parents, who had also resided with him in India and essentially the remittances from the Claimant's sister-in-law just topped up his income as and when it was needed.
4. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 10 December 2015. In granting permission the First-tier Tribunal Judge simply set out the grounds of appeal and stated that it was arguable that the judge had misdirected herself for the above reason and the grounds submitted by the respondent are arguable.

#### *Hearing*

5. At the hearing before me Mr Tufan, on behalf of the Secretary of State, submitted that the issue was simply whether or not the Claimant had been dependent on his Sponsor, the EEA national, during the time that he was living in the United States and whether the Claimant relied upon the Sponsor for his basic or essential needs. He accepted that dependency had been established by the Claimant upon his Sponsor EEA national since his arrival in the United Kingdom.
6. Mr Butterworth on behalf of the Claimant made very detailed submissions. He referred me to **Moneke** at [41] and also to the decision in **Flora May Reyas v Migrationsverket Case C-423/2012ECJ**. He submitted that the First-tier Tribunal Judge had correctly directed herself in respect of the relevant case law at [21] and [22] of her decision and indeed the Judge there does refer not only to **Reyas** but also to **Jia Case C1/05**, the judgment of the Court of Appeal in **Bigia [2009] EWCA Civ 79** as well as the decision in **Moneke (EEA - OFMs) Nigeria [2011] UKUT 00341 (IAC)**

where the Tribunal expressly considered the issue of dependency in this context and confirmed that the test of dependency is whether the person needs financial support from the EEA national or his spouse in order to meet his essential needs.

7. Crucially at [41] the First-tier Tribunal Judge referred to the decision known as **Moneke** (1) which in turn referred both to the decisions of the Court of Appeal in **SM (India)** and the Court of Justice in **Lebon** [1987] ECR 2811, and also made reference to the entry clearance instructions in force at that time, at chapter 5.12 which stated *inter alia*: “provided a person would not be able to meet his or her essential living needs without the financial support of the EEA national she/he should not be considered dependent on that national”. In those circumstances it does not matter that the Claimant may in addition receive financial support income from other sources.
8. The factual basis of this application is that the Claimant had worked whilst in the US. He found employment at a cell phone agency repairing phones in respect of which he was paid \$9 an hour but his hours were not constant. Sometimes he only had six or nine hours a week, sometimes no hours at all, and therefore he only managed to meet this essential living needs with the financial assistance of his brother and sister-in-law.
9. The First-tier Tribunal Judge noted this evidence and she expressly found at [23] correctly in my view that:

**“Dependency is a question of fact. I would consider essential needs to include food, clothing and accommodation. I would not consider gym membership, computers or an expensive mobile phone to be essential needs. For the appellant to show that he continues to be dependent he must show that he was dependent before coming to the UK, and that the support is continuing.”**

10. And at [25] she found

**“On the evidence about £1200 was sent to the appellant yearly, sometimes more, sometimes less. Even reducing this by 50% to exclude Mr Powar’s contribution, it is a significant amount. The frequency of remittances varied according to the appellant’s needs, which suggests to me that the appellant was dependent on his brother and sister-in-law at the times when he could not meet his essential living needs. This included material help paying his rent when his hours of work were not enough to pay his rent and bills.”**

And as a consequence the judge went on to find at [26] that the requirements of Regulation 8(2)(a) and (c) had been met.

11. In light of [51] of **Moneke** I find that whilst the Claimant was not continuously and solely dependent upon his EEA national sister-in-law and brother immediately prior to his entrance to the United Kingdom, he was, as First-tier Tribunal Judge Phelan found, dependent upon them for his essential living needs between 2010 and 2014 to the extent that he would not have been able to manage without the money that they remitted to him.

**Notice of Decision**

12. For those reasons I find that there is no material error of law in the decision of the First-tier Tribunal Judge which I uphold. The appeal by the Secretary of State for the Home Department is accordingly dismissed.
13. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Chapman