



IAC-AH-CO

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

Appeal Number: IA/09714/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 December 2015**

**Decision & Reasons Promulgated  
On 21 January 2016**

**Before**

**Mr H J E LATTER  
DEPUTY UPPER TRIBUNAL JUDGE**

**Between**

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

**Appellant**

**and**

**HAFIZ MUHAMMAD RIZWAN  
(ANONYMITY DIRECTION NOT MADE)**

**Respondent**

**Representation:**

For the Appellant: Mr S Whitwell, Home Office Presenting Officer  
For the Respondent: Mr R de Mello, instructed by Veja & Co, Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Amin) allowing an appeal by Hafiz Rizwan against a decision dated 6 February 2014 refusing him a residence card as confirmation of a right to reside in the United Kingdom. In this decision I refer to the parties as they were before the First-tier Tribunal, Mr Rizwan as the appellant and the Secretary of State as the respondent.

## Background

2. The appellant is a citizen of Pakistan born on 1 May 1988. He applied for a residence card on 6 December 2013 as confirmation of a right to reside in the UK. He claimed to be a family member of his sister-in-law Paula Machado, the wife of his brother Muhammad Saleem. However, the respondent was not satisfied that the appellant could meet the requirements of reg. 8 of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") as he had not provided any evidence of his dependency on his EEA national sponsor either in Pakistan or in the United Kingdom, that he had been dependent on his sponsor immediately prior to entering the UK or that he had been residing with or dependent on her since entering the UK. In the circumstances he failed to meet the requirements of reg. 8(2).

## The Hearing Before the First-tier Tribunal

3. At the hearing before the judge, the appellant, his brother and sister-in-law gave oral evidence. The judge found that all three witnesses were entirely credible and consistent in their evidence which can be briefly be summarised as follows. The appellant had been residing with his brother in Pakistan. Before coming to the UK he had been a student in Pakistan and his college fees were paid by his brother. His brother had lived with the family until he came to the UK following his marriage on 23 March 2010 and the grant of a residence card from 7 October 2010 to 7 October 2015.
4. The appellant arrived in the UK as a student on 7 October 2010 and was granted leave to remain until 11 February 2012, his leave being extended to 30 August 2013. Since being in the UK he has lived in the same household as his brother and sister-in-law and his brother has continued to support him in his studies and provide maintenance and accommodation in the UK.
5. The judge accepted that there had been prior dependency by the appellant on his brother [46] and that had not changed after his brother had married. The judge commented it was natural for couples to deal with finances jointly as in the present case following their marriage and the fact the money had been sent to the appellant from a joint account did not mean that the appellant could not establish dependency [49]. The judge also found that the appellant and his brother had been members of the same household in Pakistan before his brother came to the UK and since he arrived in the UK, he has been a member of his brother's household and was supported by him both financially and emotionally. The judge, therefore, found that the requirements of reg 8(2) were met and the appeal was allowed to the extent that the matter was remitted back to the respondent to consider under reg. 17(4) whether the appellant should be issued with a residence card [53].

## Grounds and Submissions

6. The grounds of appeal in substance raise three issues. Firstly, it is argued that whilst the appellant and his brother may have been living in the same household in the past, there was no finding that the sponsor had EEA status at that time and it could

not therefore be shown that they were members of the same household for the purposes of the EEA Regulations. Secondly, it is argued that in the absence of any adequate documentary evidence the judge failed to explain how financial dependency was established and thirdly, if in fact money was sent to the appellant in Pakistan it did not constitute dependency as it was said that this was only to support the appellant's education and that the family had other means to support themselves in Pakistan.

7. Permission to appeal was granted by the First-tier Tribunal for the following reasons:
  - "2. The application for permission to appeal asserts that the decision breaches the guidance of Moneke [2011] UKUT 341 which requires an EEA extended family member claimant to have been a dependant in the household of the EEA sponsor at the time that sponsor themselves had EEA citizenship which was lacking in this case.
  3. Taking a holistic view of the evidence in the round ... I find that there was prior dependency on the brother' (§48). There is no finding of the sponsoring brother himself having achieved EEA citizenship at the time of the dependency found by the F-tTJ which, therefore and in accordance with the Moneke, amounts to an arguable error of law."
- 8 Mr Whitwell adopted his grounds. In respect of the first ground he argued that the finding at [30] showed that the dependency in Pakistan arising from money remitted there had been prior to his brother being able to bring himself within the EEA Regulations. Secondly, a large bundle of documents had been produced in evidence but there was no adequate documentary evidence to support the oral evidence about prior dependency. Finally, he argued that the finding of dependency was not open to the judge in circumstances where it was clear that prior dependency had been simply to support the appellant's education.
9. Mr de Mello referred to and relied on Home Secretary v Rahman [2012] EUECJ C83/11 at [33]-[35] which confirmed that when an application as an extended family member was based on dependency, an applicant did not need show that the dependency existed at a time when both he and his EEA national sponsor lived together in the same country.
10. He submitted that the judge had made clear findings on this issue which were properly open to her. She had accepted that the appellant and his brother had lived in the same household and after the brother came to the UK he had continued to provide financial support, the judge accepting that the money sent to the appellant came from a joint account. Mr De Mello did not accept that the grant of permission to appeal extended to the second and third grounds as it focussed solely on the first ground. Without prejudice to that submission, he argued that so far as the finding of dependency was concerned, the judge had properly directed herself taking into account the decision of the Upper Tribunal in Reyes (EEA Regs: dependency) [2013] UKUT 314.

Assessment of whether the First-tier Tribunal erred in law.

11. The issue before me is whether the First-tier Tribunal erred in law such that the decision should be set aside. The first ground seeks to argue that the dependency relied on in Pakistan was at a time when the sponsor did not have EEA status. When granting permission to appeal the First-tier Tribunal said that it was arguable that there was an error of law as there was no finding that the sponsoring brother had himself achieved EEA citizenship by the time of the dependency found by the judge. However, whether the sponsoring brother had acquired EEA citizenship is not an issue in the context of this appeal.
12. The requirement in reg. 8(2)(a) is that the appellant has to show that he is the relative of an EEA national, his spouse or his civil partner residing in a country other than the UK and is dependent on the EEA national or is a member of their household. The appellant's brother became the spouse of an EEA national on 23 March 2010. No issue arises of him having to achieve EEA citizenship as opposed to EEA status and, indeed, it was accepted that the appellant's brother is and was at all material times a citizen of Pakistan.
13. The judge accepted that after the marriage of his brother and before he arrived in the UK, the appellant continued to receive financial support from his brother [46]. She then said that taking a holistic view of the evidence in the round and notwithstanding the lack of documentary evidence, she found that there was prior dependency by the appellant on his brother [48]. These findings must be read in the light of what the judge went on to say in [49]:

"49 I also find that there was no change in the dependency after the appellant's brother was married. It is also natural for couples to deal with their finances jointly as in this case following a marriage. The fact that the money was sent to the appellant from a joint account does not mean that the appellant cannot establish dependency."
14. Although at points in the determination of the judge referred to the appellant being dependent upon his brother, as indeed he was prior to the marriage, the issue was whether the appellant was able to establish dependency on an EEA national in accordance with reg 8(2). In his application the appellant identified his sister-in-law as his EEA national family member and there is no reason to believe that the judge was not fully aware of this: see in particular [2], [3] and [29]-[31] of the decision. She accepted that the appellant's dependency continued after his brother's marriage but it was now met by remittances from a joint account. The comment that the fact that the money was sent from a joint account did not mean that the appellant could not establish dependency indicates to me in the context of the facts in this case that the judge was finding that the appellant had established a dependency not only on his brother but also on his sister-in-law for the period after his brother's marriage on 23 March 2010 up to his arrival in the UK on 7 October 2010 so meeting the requirements set out in Rahman.
15. The judge went on to find that the appellant became and remained a member of his brother and sister-in-law's household after he arrived in the UK on 7 October 2010

and had continued to receive financial support [52]. Therefore, although the judge refers to dependency on the applicant's brother, in the light of her findings of fact, there was after the marriage a dependency on his brother and his sister in law, the EEA national. No issue therefore arose of the appellant having to establish as part of his claim that his brother had become an EEA national.

16. I now turn to the second and third grounds. I do not read the grant of permission as extending to these grounds. The judge clearly focussed on the status of the sponsor and there is no reference to the issues seeking to challenge the judge's findings on financial dependency or any indication that he regarded those matters as arguable.
17. If I am wrong about that, I am not satisfied that there is any substance in these grounds. The decision of the Upper Tribunal in Reyes gives guidance on the assessment of dependency as do the current UKBA ECIs at Ch 5.12. I am not satisfied that there is anything in the judge's decision to indicate that she erred in her approach to or assessment of whether the appellant could properly be described as dependent on his brother and sister-in-law.
18. It was argued that there should have been more documentary evidence to support certain aspects of the oral evidence but in the light of the judge's findings of credibility on the oral evidence [46] I am not satisfied that it is arguable that the judge erred in law in this respect. Similarly, the fact that the financial support particularly in Pakistan was primarily to provide for the appellant's education does not in itself undermine the judge's assessment that it amounted to dependency. This was an issue of fact for the judge to assess in the light of the evidence as a whole and I am satisfied that the decision she reached was properly open to her for the reasons she gave.
19. In summary, I am not satisfied that the First-tier Tribunal erred in law.

#### Decision

20. The First-tier Tribunal did not err in law and the decision that the appeal be remitted to the respondent to consider whether the appellant should be issued with a residence card stands. No anonymity order was made by the First-tier Tribunal and no application was made for one at this hearing. .

Signed H J E Latter

Date: 20 January 2016

Deputy Upper Tribunal Judge Latter