



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00178/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19th October 2018

Decision & Reasons Promulgated
On 20th November 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MUHAMMAD SHAHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Miss A Jones, instructed by Connaughts Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan born on 6th April 1994 and he appeals against the decision of First-tier Tribunal Judge Walker promulgated on 17th

May 2018 refusing his appeal against the decision of the Secretary of State given on 6th December 2016. The Secretary of State's decision was to refuse the application of a family permit to join Miss Sara Alexandra Duarte de Almeida in the United Kingdom as her reported brother-in-law under Regulation 8 of the Immigration (European Economic Area) Regulations 2006. The application was made on 24th November 2016.

2. The Entry Clearance Officer was not satisfied that the appellant and sponsor were related as claimed because the appellant submitted a NADRA Family Registration Certificate issued on 9th July 2015, over twenty years after the appellant and his brother were born. Although the DNA test showed he was related, the Entry Clearance Officer was not satisfied that Muhammad Usman was the person who provided the DNA, nor was the Entry Clearance Officer satisfied that the appellant had provided his DNA to be tested.
3. Further, the Entry Clearance Officer was not satisfied the appellant was wholly or mainly financially dependent on his sponsor or if he was, the Entry Clearance Officer was not satisfied this was dependency of necessity rather than choice. The judge made findings considering that the appellant's evidence that he had a close relationship with his sister-in-law was exaggerated as they had never met and secondly the appellant's claim to be completely dependent upon his sister-in-law and to need her help and support was a further exaggeration. The sponsor and her husband had given conflicting evidence as to what the appellant was studying in Pakistan and how long he had been studying.
4. At the hearing before First-tier Tribunal Walker, the sponsor stated in evidence that she was supporting the appellant in the sum of £200 a month; her husband estimated payments between £150 and £200 a month. The schedule produced from the money transfer receipts in the appellant's bundle showed a total transfer of £3,807.40 since May 2015, an average of £106 per month [17].
5. The judge found the appellant and his parents lived in Faisalabad in a rented property which cost about £95 a month [18]. The evidence of the appellant and sponsor was the parents contributed little to the rent and that the major part of the sponsor's financial contribution was taken up by that rent. Thus, all three were beneficiaries of the payments.
6. The judge accepted that funds were being sent by the sponsor and her husband to the appellant and his parents, but these payments were for the benefit of all three and not just the appellant.
7. The judge did not accept the appellant was '*wholly maintained*' by the sponsor. At paragraph 22 the judge stated that the payments were made but this did not amount to any degree of dependency.

8. The appellant had not shown, *'whatever limited dependency there is a dependency of necessity'*. The appeal was therefore dismissed under the 2016 Regulations.
9. In the application for permission to appeal it was contended that the judge appeared to accept the appellant and his sponsor were related as claimed but there was no finding as to that fact although it was assumed throughout the determination.
10. The judge erred in two materials ways:
 - (i) first, he applied the wrong test as to whether the appellant was dependent and used the phrase 'wholly dependent' which was an error;
 - (ii) the judge considered whether the appellant was a dependant of necessity as opposed to by choice but was irrelevant.
11. It was submitted that the judge had applied the wrong test.
12. There was no definition of dependency within the EEA Regulations themselves. The case of **Le Bon ECJ case 316/85** stated.

"the status of dependent member of a worker's family ... is the result of a factual situation, namely the provision of support by the worker, without there being any need to determine the reasons for recourse to the worker's support".
13. The judge erred in law by concluding that financial support provided for the benefit of three people did not render the appellant dependent within the meaning of Regulation 8, the amount sent to the family in Pakistan having been worked out as £106 a month covered the rent plus an additional sum.
14. The judge erred in concluding that paying for the cost of accommodation and further support could not bring a person within the definition of dependency. The case of **Rahman** in the Court of Justice of the European Union set out the financial support, showed dependency. The applicant did not need to be dependent on the EEA national to meet all or most of their essential needs.
15. The Home Office policy guidance set out that half of income being from a sponsor and half from a pension would represent dependency.
16. At the hearing before me Miss Jones relied on her written grounds of application. She submitted that the judge had applied the wrong test.
17. Mr Melvin accepted in response that there was no Rule 24 but asserted that the judge had considered all the evidence. At paragraphs 15, 16 and 17 it was clear he had not accepted the closeness as claimed between the sister-in-law and the appellant. The dependency was shown in relation to the parents not the appellant.

18. The judge made adequate findings and the 2006 Regulations and policy were not relevant. There was a blanket disbelief of the levels of dependency and the judge found an exaggeration. This was an attempt to reargue the case. Mr Melvin submitted that there were however no findings on the fact of whether the appellant was related as claimed, although it appeared that DNA evidence was given, and the relationship had been accepted at the hearing and thus the appeal before the Tribunal and dependency was the only issue under contention. Mr Melvin submitted that should there be an error of law the matter should be re-heard de novo.

19. In conclusion I note the judge at paragraphs 21 to 23 said this,

“21. I accept that these funds are being sent by the sponsor and her husband to the appellant and his parents in Pakistan, but that these payments are for the benefit of all of them and not just the appellant. The claim that has been made that all of the funds of the appellant is selective and not credible. The major part of the payments are taken up by rent and which is the benefit of all. If the appellant’s parents are too old, infirm and penniless as claimed, then I would expect them to be the main recipients of any financial assistance”.

22. I do not accept that the appellant is wholly maintained by the sponsor. He no doubt benefits to some extent by the payments that are made but this does not amount to any degree of dependency.

23. Neither has the appellant shown that whatever limited dependency there is a dependency of necessity. There has been no evidence of him working or being incapable of working and earning”.

20. In **Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383**, at paragraph 32 the test was set out as follows:-

“In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.

21. Thus, the critical question is whether in fact the claimant is in a position to support himself or not.

22. It would appear that the evidence given was that the appellant was a student and as stated in Lim, the fact that he chooses not to get a job and becomes self-supporting is irrelevant. The judge dismissed the appeal on the basis that there were payments for the benefit of all of the recipients not just the appellant, but this does not preclude the dependency of the appellant. Specifically, the judge stated, "there has been no evidence of him working or being incapable of working and earning". The appellant does not have to be wholly maintained by the sponsor, the relevant test is whether the resources are necessary to enable him to meet his basic needs.
23. The fact that the judge applied the wrong test fundamentally undermines his approach to the making of a factual finding.
24. Further, the fact that the DNA evidence was said to have been given and the relationship accepted, was nowhere recorded in the determination.
25. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.
26. As such, I set aside this decision in its totality and remit it to First-tier Tribunal for re-hearing.

No anonymity direction is made.

Signed

Date 16th November 2018

Helen Rimmington

Upper Tribunal Judge Rimmington