



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/04827/2018  
EA/04823/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 May 2019  
Decision given orally

Decision & Reasons Promulgated  
On 14 May 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

NELLUR VALAPPILAACHUATHAN ANANDAN  
SREEVILASINI ANANDAN  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: No appearance

For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. There was no appearance by the sponsor at the hearing. I am satisfied that she and the appellants themselves were served with notice of hearing and I have decided there was no reason not to proceed with the appeal.

2. The appellants (a married couple) who are citizens of India have been granted permission to appeal the decision of First-tier Tribunal Judge Juss who for reasons given in his decision dated 18 January 2019 dismissed their appeals against the Entry Clearance Officer's decisions dated 2 July 2018 refusing to issue EEA family permits to them. The appellants had sought these permits as the dependent direct family members of their daughter-in-law Oana-Luiza Ilina, a Romanian national, and the wife of their son Vinod Anandan. The Entry Clearance Officer considered the appellants had not provided sufficient evidence that Oana-Luiza Ilina was exercising her treaty rights in the United Kingdom.
3. Judge Juss dismissed the appeal for reasons given at [9] to [13] in his decision as follows:
  - "9. I have given careful consideration to the oral and documentary evidence and submissions from both sides that I have heard today.
  10. First, I have before me a letter dated 21 May 2018 from 'Results Through Digital' and I can see that this simply confirms the terms of the employment of the EEA national. In the same way there is a letter dated 16 May 2018 from 'Visa Europe' confirming that Mr Anandan is employed by 'Visa Europe Services' since March 20, 2018 and is paid £80,000 per year. There is then a Payslip from the latter showing net payment of £4,386.28 for 18 May 2018, and confirming the annual salary is £80,000 per annum. I note that Mr Anandan also holds a Residence Card as a family member of the EEA national. There is no other evidence.
  11. Accordingly, I am not satisfied that *Ms. Oana Luiza Nellooruvalappil*, the EEA national, sponsoring the Appellants, has been able to show that she is exercising treaty rights in the manner required. There is a dearth of evidence that has been put forward to this effect. This appeal, according, falls to be refused.
  12. Second, I am also not satisfied that the Appellants can show 'dependency' on the EEA national, or on their son. There is a consistent line of long-standing authority now as to how 'dependency' is to be interpreted in EU law, which has been repeatedly been affirmed and re-affirmed. With respect to the meaning of dependency within Article 2 of the Directive and regulation 7 of the 2006 Regulations, the Upper Tribunal has set out the relevant criteria in **Moneke** (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC), drawing on Court of Justice cases such as **Lebon** C-316/85 [1987] ECR 2811 and **Jia v Migrationsverket** Case C-1/05; and Court of Appeal cases such as **Pedro** [2004] EWCA Civ 1358 and **SM (India) v Entry Clearance Officer (Mumbai)** [2009] EWCA Civ 1426.
  13. In **Moneke** at [41] it was noted that "dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in **SM (India)** ... dependency means dependency in the sense used by the Court of Justice in the case of **Lebon** ..." There is also the Court of Justice ruling in the case of **Secretary of State for the Home Department v Islam & Anor** [2012] EUECJ C-83/11 (made in response to the order of reference by the Upper Tribunal in the case of **MR and Others (EEA extended family members) Bangladesh** [2010] UKUT 449 (IAC))

which, although being concerned not with regulation 7/Article 2.2 family members but 'Other Family Members' (OFMs) under regulation 8/Article 3.2, sheds further light on the Court's approach to the meaning of dependency. The Court made clear that dependency had to be genuine, not contrived and that its interpretation had to be informed by the principle of effectiveness."

4. The grounds of challenge to the judge's decision raise the following points. The first is that the EU national came to the United Kingdom with her spouse in 2015, since when they have been working and contributing by way of taxes and national insurance contributions to the UK government. The EU national's previous employer went into insolvency a few months prior to her maternity leave. There is reference to the new employer recommending an application be made for maternity allowance from the Department of Work and Pension and the EU national complied accordingly. There is reference to the birth of their first son in December 2017 and the difficulties for the family to handle everything with the baby and hence the decision to bring the parents-in-law to help for a couple of months.
5. The grounds continue with the observation that for the visa application, material was provided to prove dependency. There is reference also to the Entry Clearance Manager's review following service of the notice of appeal, who decided that the DWP maternity allowance documentation was an "officiation" of the employment status.
6. A further point made in the grounds which are somewhat discursive in nature is that the First-tier Tribunal never mentioned the matter of maternity which was the main argument between the appellants and the Entry Clearance Officer. Furthermore, the point is raised that the Tribunal had observed that there was no evidence of dependency but this was never an issue between the Entry Clearance Officer and the appellants. It is correctly argued by reference to the decision of the Court of Justice of the European Union in *Saint Prix v DWP* Case C-507/12 that a woman who gives up work or seeking working because of physical constraints of the late stages of pregnancy will retain her worker status provided she returns to work or finds another job within a reasonable period after the birth of her child.
7. In granting permission to appeal, First-tier Tribunal Judge Grant-Hutchinson observed that it was arguable the judge had misdirected himself by failing to take into account the maternity aspect.
8. After reviewing all the papers (as she had an incomplete set), Ms Holmes accepted that the judge made no reference to the maternity aspect which is readily evidenced in documents provided in the Entry Clearance Officer's bundle. She furthermore accepts that the issue of dependency had not been raised by the Entry Clearance Officer. Accordingly, I consider Ms Holmes was correct to concede that the decision of First-tier Tribunal Judge Juss could not be sustained and it is therefore set aside.
9. Prior to the hearing of this appeal a document reached the Upper Tribunal from the sponsor dated 29 April 2019. In summary, this document is a letter from the Home

Office addressed to the sponsor dated 29 March 2019. The first paragraph explains its effect, and I quote:

“I am pleased to inform you that your application under the EU Settlement Scheme has been successful and that you have been granted limited leave to remain (LTR) in the United Kingdom for five years under Appendix EU to the Immigration Rules. This is also referred to as pre-settled status. Your status takes effect from the date of this letter which can be found above.”

10. I have decided to re-make the decision in the Upper Tribunal particularly so in the light of the information contained in this letter and the absence of any concern expressed by the Entry Clearance Officer over the element of dependency. Ms Holmes accepts that, based on this letter, the appeal should be allowed as it meets the only issue of concern leading to the refusal in this case. Accordingly, this appeal is allowed.

#### NOTICE OF DECISION

The appeal is allowed.

No anonymity direction is made.

Signed

*UTJ Dawson*

Upper Tribunal Judge Dawson

Date 10 May 2019