Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: EA/05173/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 (P) **Decision & Reasons Promulgated**

On 12 October 2020 **On 16 October 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

LEFTER HAMZAJ

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation (by way of written submissions)

For the appellant: **None received**

For the respondent: **None received**

DECISION AND REASONS

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Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Fisher on 4 May 2020 against the determination of First-tier Tribunal Judge Quinn, promulgated on 17 January 2020 following a hearing at Hatton Cross on 31 December 2019.

2. The appellant is an Albania national born on 19 April 1981. He has twice entered the UK unlawfully. He initially arrived in November 1999 and claimed asylum. That was refused on October 2000 and an appeal against that decision was dismissed on 21 February 2001. Further representations were made in March 2001 but refused under paragraph 353 of the Immigration Rules in August 2001 and the appellant was removed in February 2006. He returned illegally in July 2006 but it was not until November 2012/January 2013, according to his chronology, that he sought to regularise his status. This was refused in March 2014. In July 2014 he made a further application but that was refused on 16 September 2019. An application for reconsideration was made in October 2014 but refusal was maintained on 15 October 2014. A judicial review claim was then filed on 10 November 2014 but refused by the Upper Tribunal on 18 June 2015. Fresh human rights representations were made on 10 July 2014 but these were refused and certified on 26 October 2015. Another request for reconsideration was made on 30 October 2015 but refused.

3. In December 2018, the appellant applied for a residence card as the dependant of his brother, an Italian national, who had come here in September 2016 and who lived with his wife and child. The application was refused on 9 January 2019 because the respondent was not satisfied that the appellant had established dependency upon his brother. It was noted that the appellant had claimed he had come here to make an asylum application and that his brother arrived here after the appellant's second entry and that he had not made any reference to dependency upon his brother in any of his previous applications or representations.

4. The appellant lodged an appeal. It came before First-tier Tribunal Judge Quinn at Hatton Cross and she heard oral evidence from the appellant and his brother. She noted that the sponsor's income did not even meet the minimum wage and was not satisfied it could support him and his family let alone the appellant as well. She found that the appellant could well be working in the UK himself, noting that he had been doing so when he had permission to work and also when he did not. She noted that no details of the sponsor's employment in Italy had been given even though it was claimed that he had been supporting the appellant and their mother from his income. There was no evidence of shared cohabitation at the St Leonard's Road accommodation and the judge had no evidence from the landlord to confirm the appellant's residence with his brother at the present claimed address. She was not satisfied that the appearance of his name on utility bills proved residence or dependency and noted no council tax bill had been adduced. She noted that the application had only been made

when all other avenues had failed and concluded that the appellant had failed to show he relied on his brother for his essential living needs. She also found that he had not been dependent upon him when he had been living in Albania after his removal in 2006. She considered his scant regard for the immigration laws and considered that his behaviour cast doubt on his honesty. Accordingly the appeal was dismissed.

5. The appellant sought permission to appeal. Three grounds were put forward. The first was that the judge erred in finding that the appellant had not been dependent upon his brother between February and July 2006 whilst living in Albania. It is submitted that the appellant and his brother had given consistent oral evidence that people had delivered money to the appellant from the sponsor, that the appellant could not have worked because he was caring for his sick father and that he had not raised dependency in 1999 because his dependency post dated his first entry to the UK. The second ground argues that the judge made inconsistent findings about dependency in paragraphs 37 and 55. The third ground argues that the judge failed to consider whether the appellant was a member of the sponsor's household. It is submitted that the bank statements also showed cohabitation and that these were not considered.

6. Permission was granted on the basis that the judge arguably made inconsistent findings. Although the judge considered that the other grounds were a disagreement with the judge's findings, the appellant was not prohibited from arguing them.

Covid-19 crisis: preliminary matters

7. The appeal would normally have been listed for hearing after the grant of permission but due to the pandemic this did not happen and instead directions were issued on 15 July 2020 inviting the parties to make submissions on the manner of disposal and on the merits.

8. Neither party has complied with the directions. I am satisfied that they were properly served and I now consider whether this matter can be determined on the papers.

9. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and

avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

10. I have had regard to the grounds for permission, the determination and all the evidence when deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellant have been clearly set out and that the issues to be decided are straightforward. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I am satisfied that both sides have had the opportunity to respond with their views as to a paper determination and to the merits of the errors of law alleged by the appellant but have not done so. I consider that neither party would be disadvantaged by a paper determination and that I am able to fairly and justly deal with this matter on the evidence before me.

Discussion and conclusions

11. I have considered all the papers before me.

12. I find that there is no merit at all in the first ground. It essentially amounts to an argument that the judge should have accepted the claim of dependency in Albania on the sole basis that the appellant and his brother both made that claim in their oral evidence. The judge was not satisfied that the appellant was an honest witness. His past conduct and behaviour in entering the UK illegally on two occasions, remaining for long periods without making any attempt to regularise his stay all demonstrate a scant regard for the laws of this country and the judge was entitled to find that this reflected on the weight she could give to his oral evidence. His brother would have known that the appellant was here illegally and there is no suggestion he attempted to influence him to regularise his stay. The judge was entitled to find that there was no supporting evidence of the dependency which could have been provided. It is argued that the appellant could not work in Albania in 2006 because he was caring for his sick father but in his witness statement he claims to have returned "*due to my father's death*". The sponsor maintained in his witness statement that "*at the time our father died, this appellant decided to return back to Albania to take part in his funeral*". The contention in the grounds that the judge should have considered that the appellant could not work on his return to Albania because he had to care for his sick father is this wholly undermined and contradicted by the evidence of the appellant and his brother that the father had died prior to the appellant's return. If a different account was given at the hearing, that only reinforces the judge's view that the appellant cannot be relied on to tell the truth.

13. The ground also seeks to explain the appellant's failure to mention his dependency on his brother in his 1999 application on the basis that the dependency commenced post arrival. However the grounds are entirely silent on why then the appellant did not make reference to it in any of the many

representations and applications he made to the Home Office subsequently and most significantly after his return in 2006 when, by his own account, he had become dependent upon his brother. It was entirely open to the judge to find that had there been a genuine dependency, it would have been mentioned and not relied on at the very end when all other attempts to remain here had failed.

14. Turning now to the second ground, I find that the author of the grounds has misunderstood what the judge said. Paragraph 37 must be read with paragraph 36; it is plain that the judge was setting out the appellant's claim and the sentence at 37 is a summary of that; it is not an inconsistent finding. Alternatively, if the judge did indeed make a mistake at paragraph 37, it cannot be anything other than a typographical error as it can be seen from the determination that the judge was consistent throughout that the claim of dependency had not been met. Her reasoning at 31-35, 38-55 make that eminently clear and plainly focus on the reasons why she concluded that the appeal could not succeed.

15. The third ground is that the judge did not consider whether the appellant was a member of the sponsor's household. I cannot find that the appellant can succeed on this basis either. The judge was plainly aware that this was an issue; she records it as the appellant's case at paragraph 13. She considers whether the appellant and sponsor lived together as the grounds concede but finds that bills do not show cohabitation and that there was no confirmation from the landlord, no tax documents or wage slips to show an address for the appellant. Having found that cohabitation had not been established and that dependency had not been shown either, it follows that the appellant could not have been found to be part of the sponsor's household. Even if the judge does not specifically state as such in her determination, no other outcome could have been possible on the available evidence and the findings that were made. The bank statements take matters no further but in any event the judge was aware of them (at 19, 32 and 48).

16. The judge properly found that the sponsor's income of £13,000 could not support his own family let alone the appellant as well. I note from the appellant's application form that rent alone (of £1100 per month excluding bills) eats away all the income. Plainly, therefore, the truth has not been told. When the absence of meaningful evidence such as evidence from the landlord, supporting statements from those who allegedly transported funds to the appellant in Albania, evidence of the sponsor's work in Italy and the appellant's own pay slips, the judge was entitled to find that real dependency had not been shown. The appellant's admission that he worked with and without permission to do so, his scant regard for the laws and the failure to mention his so called dependency until 2018 were all matters the judge was entitled to consider.

17. For these reasons, I find that the judge's decision to dismiss the appeal contains no errors of law and it is upheld.

Decision

18. The decision of the First-tier Tribunal does not contain any errors of law. The decision to dismiss the appeal is upheld.

Anonymity

19. No application for an anonymity order has been made at any stage and I see no reason to make one.

Signed

R. Kekić
Upper Tribunal Judge

Date: 12 October 2020