



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

Appeal Number: EA/05130/2019

THE IMMIGRATION ACTS

Heard at Field House

**On 27 November 2020
*Extempore decision***

**Decision & Reasons
Promulgated
On 12 January 2021**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**MR RAMAJEYAM SRISKANTHARAJAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N. Paramjorthy, Counsel

For the Respondent: Mr S. Kovats, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge M A Hall promulgated on 20 November 2019, in which he dismissed the appeal of the appellant, a citizen of Sri Lanka born in 1979, against a decision of the

respondent dated 13 September 2019 to refuse his application for an EEA residence card as the extended family member of an “EEA national”. The sponsor to that application had been the appellant’s brother, an Italian citizen and therefore an EEA national.

2. Permission to appeal was granted by First-tier Tribunal Judge Keane on two bases. First, that the judge had arguably erred in relation to his treatment of the evidence concerning the appellant’s claimed dependency on the sponsor in Sri Lanka. Secondly, whether it was necessary for the sponsor to have been the head of the household he shared with the appellant in Sri Lanka.
3. The respondent provided a Rule 24 notice on 30 June 2020.

Factual Background

4. The sponsor in moved to Italy from Sri Lanka on a work visa in 2007. I was informed by Mr Paramjorthy on behalf of the appellant that the sponsor acquired Italian citizenship and therefore became an EEA national in the year 2009. The only indication as to the date of the acquisition of his Italian nationality and the decision of the First-tier Tribunal is that which is set out at [45] which states that the earliest time at which the judge below could ascertain that the sponsor acquired Italian nationality was on 24 March 2010. For the purposes of this appeal, I accept Mr Paramjorthy’s submissions that the sponsor’s nationality was acquired in the year 2009. Nothing turns on whether it was 2009 or 2010.
5. In August 2008, the appellant arrived in this country having travelled via Laos and Thailand from Sri Lanka. His case is that he was dependent upon the sponsor before and subsequent to his arrival and, accordingly, meets the requirements of the definition of an “extended family member” in the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”).
6. The judge discussed what took place in Sri Lanka, and found that the appellant and the sponsor had given incredible evidence concerning the support needs the appellant had in that country. At [47], he found that the appeal could not succeed because the appellant entered the United Kingdom in August 2008 and the sponsor did not enter until April 2011. During that intervening period, found the judge, the appellant was clearly not a member of the sponsor’s household. The judge did not find that he was financially dependent on the sponsor during those times as insufficient evidence had been provided to establish that. He also found at [51] that it had not been proved to the balance of probability standard that during the same period the appellant had been a member of the sponsor’s household which was the other basis upon which the requirement to be an extended family member could have been met on the facts of this case.

7. In submissions, Mr Paramjorthy relied on the grounds of appeal, although did not rely on paragraph 5, in which it was contended that the judge erred in relation to the issue of dependency in Sri Lanka.

Discussion

8. While the grounds of appeal contend that the judge erred in relation to the possible combinations and dates of dependency and household membership in the country of origin and the host Member State, on any view it was impossible for this appeal to have succeeded before the First-tier Tribunal. The sponsor did not become an EEA national until *after* the appellant had arrived in this country. The appellant arrived here in August 2008 and it was not until 2009 that the sponsor acquired Italian nationality, arriving in this country in 2011. Regardless of the level of prior dependency or household status of the appellant in relation to the sponsor before that point, it is not possible for the appellant to have met any of the requirements of the 2016 Regulations on account of this factual matrix. As the respondent sets out in the Rule 24 notice, the case of Moneke [2011] UKUT 341 held as following at the second paragraph of the headnote,

“In either case the dependency or membership of the household must be on a person who is an EEA national at the material time. For this reason, it is essential that Tribunal Judges establish when the sponsor acquired EEA nationality.”

9. The requirements of the 2016 Regulations imposed on extended family members require either prior dependency upon the sponsor or prior household membership in relation to the sponsor *before* the extended family member’s arrival in this country: see regulation 8(2) of the 2016 Regulations. By definition, given the sponsor in these proceedings did not acquire an EEA nationality until *after* the appellant had arrived and began to live in this country, it was simply not possible on any view of the evidence before the First-tier Tribunal for the appellant to have been able to establish his claim to have been an extended family member. Accordingly, there is no basis upon which the appeal before the judge below could possibly have been allowed and accordingly any errors the judge may or may not have made in relation to his assessment of the evidence are simply immaterial. For those reasons this appeal is dismissed.

No anonymity direction is made.

Signed *Stephen H Smith*
2020

Date 16 December

Upper Tribunal Judge Stephen Smith