



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06543/2019 (V)

THE IMMIGRATION ACTS

Heard at: Field House
On: 18 January 2021

Decision & Reasons Promulgated
On: 02 February 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

OMER SHABBIR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gazzain, instructed by Law Lane Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a Pakistan national born on 21 January 1985. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with a residence card under the Immigration (European Economic Area) Regulations 2016 as the dependant direct family member (son) of an EEA national exercising treaty rights in the UK.

3. The appellant entered the United Kingdom on 23 September 2009 with a Tier 4 student visa valid until 31 October 2010 and was granted extensions of leave on the same basis until 19 April 2015. On 20 May 2014 he applied for a residence card as a dependant direct family member of his father, Shabbir Mohammad, a Swiss national, which was issued on 28 July 2017, valid until 28 July 2022.

4. On returning to the UK from a holiday in Pakistan on 7 April 2019, the appellant was refused admission and his residence card was revoked on 12 August 2019. The reason for that decision was that the respondent was not satisfied that the sponsor was a qualified person in accordance with regulation 6 of the EEA Regulations 2016. The appellant appealed against that decision.

5. The appellant's appeal was heard by First-tier Tribunal Judge Anthony on 6 September 2019 and was dismissed in a decision promulgated on 11 September 2019.

6. In that decision, the judge recorded the evidence that the appellant's father, the EEA national sponsor, had lived in Switzerland from August 2018 until January 2019 and had not worked in the UK during that period and that at the time of the appellant's immigration interview on 7 April 2019 his father was in Switzerland and he was not certain when he would be returning to the UK. Both the appellant and his sponsor had confirmed at interview that the sponsor was not employed at the time. On the basis of that evidence the judge rejected the documentary evidence submitted to show that the sponsor was working in the UK for C21Zone Ltd from July 2018 until April 2019 and concluded that the documents had been manufactured and the evidence was untruthful. The judge rejected the assertion made that the sponsor retained worker status as a result of looking after his son who was ill in Switzerland and concluded that the respondent was correct to refuse admission. However the judge accepted that the sponsor was working in the UK from May 2019, for C21Zone Ltd and that he was a qualified person at the time of the hearing. Nevertheless, in light of evidence that the appellant was working and earning around £1200 a month, that the sponsor was earning below the minimum income threshold, that the sponsor had given evidence at interview that he was financially supported by the appellant and that the appellant paid the rent and was named on the tenancy agreement, and in the absence of any evidence of the sponsor's claimed savings, the judge did not accept that the appellant was dependent upon the sponsor. The judge considered the appellant's evidence of financial dependency upon the EEA national sponsor to be a total fabrication and concluded that he could not satisfy the conditions in regulation 7(1)(b) as a direct dependant of the sponsor.

7. Less than two weeks after that decision, on 23 September 2019, the appellant applied again for a residence card as a dependant family member. The respondent refused the

application on 18 November 2019, noting that most of the evidence relied upon was the same as that previously considered by the First-tier Tribunal. The respondent noted that the council tax bill for the appellant's address only named the sponsor and that there was no evidence to show that the sponsor could afford to pay the rent on the property and support himself and the appellant on his earnings. There were no bank statements showing any other further income to which the sponsor had access and no evidence of the sponsor's financial support for the appellant nor evidence of the sponsor paying rent, bills etc. The respondent noted that the appellant was now claiming to be unemployed but no reason was given as to why that was the case. The respondent did not consider there to be sufficient evidence of residence with, or dependency upon, the sponsor and did not accept that the appellant met the requirements of regulation 7.

8. The appellant appealed against that decision and his appeal was heard on 11 February 2020 before First-tier Tribunal Judge Howorth. The judge noted the appellant's claim that he had lost his job and had no earnings, but found there to be no evidence of that. The judge noted that he had produced evidence of only one out of his three bank accounts and, given the adverse findings previously made against him, she did not accept that he was no longer working. The judge had regard to the evidence of the sponsor's employment and accepted that he was working, but was not able to ascertain from the evidence what he was earning. As for the question of dependency, the judge noted that there was insufficient evidence of corresponding transactions between the appellant's and sponsor's accounts and also noted the lack of evidence to explain payments going out of the appellant's account shortly after the payments claimed to have been made from the sponsor. The judge did not accept that the appellant was dependent upon the sponsor. The judge accepted that the appellant and the sponsor resided together, but did not accept that that was in itself sufficient to show dependency, given the concerns about the evidence overall. The judge was not satisfied that the appellant had shown that he met the requirements of regulation 7(b) and she accordingly dismissed the appeal.

9. Permission was sought by the appellant to appeal to the Upper Tribunal on two grounds: firstly, that the judge's reasoning on the issue of dependency was flawed under Dauhoo (EEA Regulations - reg 8(2)) Mauritius [2012] UKUT 79, as prior dependency and current membership of the same household was sufficient to meet the dependency test; and secondly, that the judge had failed to consider material evidence, including additional bank statements and payslips for the sponsor.

10. Permission to appeal was granted in the First-tier Tribunal. The respondent filed a rule 24 response, relying on the cases of Reyes (EEA Regs: dependency) [2013] UKUT 314 and Chowdhury (Extended family members: dependency) 2020] UKUT 188 in asserting that the first ground was not made out, and that the second ground failed to establish any material error by the judge.

Hearing and Submissions

11. The matter then came before me for a remote hearing by way of skype for business and both parties made submissions on the error of law issue.

12. Mr Gazzain expanded upon the grounds, relying on Dauhoo and the appellant's membership of the same household as his father, as well as the references in Reyes to dependency being based upon a number of factors including family unity and emotional dependency, none of which had been considered by the judge. Mr Gazzain submitted that the judge was wrong to require evidence that the appellant had stopped working, as that was not something which could be demonstrated by evidence. Further, the judge had failed to consider additional evidence in the bundle of transfers of funds from the sponsor to the appellant, which showed that there was a dependency. Mr Gazzain referred to the fact that the sponsor had been granted indefinite leave to remain on 30 September 2019 under the EU Settlement Scheme and he was therefore accepted as being a qualifying person.

13. Ms Cunha relied on the case of Chowdhury, where it was found that the dependency had to be continuous, which was not the case. She submitted that the judge was entitled to make the adverse credibility findings that she did and to reach the decision that she did. In response, Mr Gazzain submitted that Reyes made it clear that there had to be *present* dependency, which the appellant had demonstrated.

Discussion

14. I do not agree with Ms Cunha's reliance on Chowdhury in regard to the dependency having to be continuous, as that was clearly specifically related to regulation 8 and the particular wording of that regulation, whereas the appellant's application was made under regulation 7. However, I find no merit in the appellant's grounds of challenge.

15. In a decision made only two weeks before the appellant's application, First-tier Tribunal Judge Anthony gave detailed reasons for concluding that his claim to be dependent on his EEA national sponsor was a total fabrication as there had been clear evidence from the EEA national that in fact he was financially supported by the appellant. The sponsor's evidence, as set out at [40] of that decision, was that the appellant financially supported him, that the appellant's name was on the tenancy agreement and that the appellant paid the rent, and there was evidence in the form of payslips that the appellant earned around £1200 per month and the sponsor earned less than the minimum income threshold. That decision was not challenged, as far as I am aware. Yet less than two weeks later, in a further application, it was stated on behalf of the appellant that he was not working and was financially dependent upon the sponsor, with tenancy agreements showing the sponsor as the named tenant. The appellant now seeks to challenge the respondent's decision, and the decision of Judge Howorth upholding the respondent's decision, on the basis that they had erred in law in not accepting that evidence.

16. It was Mr Gazzain's submission that Judge Howorth erred by not accepting the appellant's claim to no longer be working. He criticised the judge for expecting the appellant to be able to produce evidence of not working and submitted that it was not possible to provide such evidence. However, given that the appellant had previously

provided evidence of his employment before Judge Anthony, it was perfectly reasonable for Judge Howorth to expect him to produce confirmation from his previous employer that he no longer worked there and the reason for him having ceased working. In light of the adverse findings made by Judge Anthony, Judge Howorth was fully entitled to reject the appellant and sponsor's unsupported evidence to that effect, in particular since the appellant had not produced evidence of all his bank accounts, as pointed out at [16] of the judge's decision.

17. As for the assertion in the grounds that Judge Howorth failed to consider material evidence, I cannot see that that is the case. I have carefully looked through the appeal bundle which was before Judge Howorth and I see no omissions, and certainly no material omissions, from her recording of the sponsor's income, at [18] to [21], and of the transactions from the sponsor to the appellant, at [27] and [28], and no errors in her assessment of that evidence at [21] to [25] and [29]. The judge gave a detailed account of the concerns arising from that evidence and the absence of evidence which ought reasonably to have been produced, at [25], [26], [29] and [31], and it seems to me that she was perfectly entitled to draw the adverse conclusions that she did in that regard and to conclude that the appellant was not financially dependent upon the sponsor. In so far as Mr Gassain relied upon evidence in a new bundle which he said addressed the judge's concerns and showed further evidence of income and provided further insight into the funds transferred to the appellant from the sponsor, and then transferred by the appellant to another of his own accounts, that was not evidence before the judge and is therefore not relevant to the error of law issue before me.

18. It is asserted further in the grounds and by Mr Gazzain that the judge erred by failing to follow the guidance in Dauhoo and by failing to conclude that dependency was established by the appellant living in the same household as the sponsor. However, neither the regulations themselves nor the interpretation provided in Dauhoo or elsewhere establish that dependency arises simply by living in the same house as another person. What has to be shown is that the applicant is a member of the EEA national's household. That was precisely the point made by Judge Howorth at [30] of her decision. Given that Judge Anthony had made findings previously that the appellant paid the rent and supported the sponsor financially, Judge Howorth was fully entitled to conclude that the fact that the sponsor's name appeared on the tenancy agreement was not sufficient to meet the relevant test, when considered with the rest of the evidence.

19. As for Mr Gazzain's submission that the judge failed to follow the guidance in Reyes at [19], that there had to be an examination of all the facts and all elements of the relationship, that the underlying objective was maintaining the unity of the family, and that the test was one of present and not past dependency, I find nothing in her decision that is inconsistent with that approach. The judge undertook a detailed and careful assessment of all the evidence and provided cogent reasons for finding that the appellant had not demonstrated that he was dependent upon his EEA national father. She was fully entitled to reach such a conclusion on the evidence before her.

20. For all of these reasons I consider that the grounds of appeal do not disclose any errors of law requiring the judge's decision to be set aside. The judge was entitled to make the adverse findings that she did, for the reasons fully and cogently given.

DECISION

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 20 January 2021