



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

Appeal Number: EA/03445/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 April 2022**

**Decision & Reasons Promulgated  
On 04 May 2022**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**FAISAL IQBAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. M Nezarati, Solicitor, Bukhari Chambers Solicitors  
For the Respondent: Mr. T Melvin, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant appeals against a decision of Judge of the First-tier Tribunal Andrews ('the Judge') to dismiss his appeal against a decision of the respondent refusing to issue him with an EEA residence card as the direct family member of an EEA national, his father. The respondent's decision is dated 28 April 2020.
2. By a decision dated 9 June 2021 Judge of the First-tier Tribunal Rhys-Davies granted the appellant permission to appeal to this Tribunal.

## **Background**

3. The Appellant is a national of Pakistan who was born in December 1986 and is presently aged 35.
4. His father, Javed, presently resides in the Midlands with his wife and other members of his family. He is aged 62 and was naturalised as a British citizen in 2005.
5. The appellant's domestic immigration history is poor. He entered the United Kingdom as a visitor in 2009, when aged 22. He overstayed after his leave to enter expired on 23 April 2010. He asserts that he made an in-time application for leave to remain in this country which was subsequently refused.
6. The appellant made an unsuccessful application for leave to remain on human rights grounds in 2012. The application was refused in March 2013 with no attendant right of appeal. He was encountered in August 2015 and detained pending removal. He was granted temporary admission on 24 September 2015.
7. On 2 October 2015 the appellant submitted a 'Zambrano' application asserting that he cared for his father. The application was refused by the respondent on 7 January 2016. His present position is that he has been dependent upon his father in this country since 2010.
8. The appellant applied for leave to remain on human rights grounds in February 2016. The respondent refused the application the following month without an attendant right of appeal.
9. The appellant travelled to the Republic of Ireland in February 2016 and remained there until April 2017. He states that he was granted permission to reside in that country and on 10 March 2017 secured an EEA residence permit as a direct family member of his father, valid until 18 September 2021. Whilst residing in the Republic of Ireland he secured employment and lived at rented premises with his father.
10. The appellant applied for entry as a visitor to this country in March 2017, identifying a desire to visit his siblings. He confirmed that he would be travelling to the United Kingdom with his father. He stated that he was single and that he had been working as a car valet since November 2016, earning Euros 800 per month, net of tax. The application was refused on 13 April 2017.
11. The appellant subsequently entered the United Kingdom via the Common Travel Area.
12. He applied for an EEA residence card but was refused by a decision dated 3 May 2018. He enjoyed no right of appeal.

13. A second application for an EEA residence card was refused by the respondent on 26 October 2018. The appellant did not appeal against this decision.
14. A third application for an EEA residence card was refused by the respondent on 29 January 2019 and the appellant did not exercise his right of appeal.
15. A fourth application for an EEA residence card was refused by the respondent on 31 January 2019. Again, the appellant did not appeal.
16. The appellant applied for an EEA residence card on 1 November 2019. He detailed, *inter alia*, that he had been dependent upon his father from birth and that he has continued to depend upon him following his arrival in 2010. The nature of the support was identified as 'much as required' and 'as regularly as required'.
17. In his latest application he identified his father's painting and decorating business in the Republic of Ireland by name and confirmed its location in Mallow, Co. Cork. In a covering letter, dated 1 November 2019, the applicant's present legal representatives identified that the appellant's father exercised EU Treaty rights for six months in the Republic of Ireland as a painter and decorator before being self-employed at a car wash for a further six months.
18. The appellant confirmed in his application that his father commenced self-employment as a taxi driver in the Midlands in April 2017 following his return to the United Kingdom. It was further stated:

'The [appellant's father] entered the UK for a short period in March 2017 to visit his children, the siblings of the [appellant]. He was admitted [to hospital] with intense chest pain on the 17 April 2017. The [appellant's father] suffered from [a] heart attack due to a fall in blood pressure. He was placed on intense care [sic], medication and was not advised [sic] to travel following which the [appellant] returned back to the UK on 30 April 2017. Due to these unforeseen circumstances, the [appellant's father] terminated his activity in Ireland and remained in the UK with his children.'
19. The appellant confirmed that he has a wife and siblings in Pakistan and visited Pakistan for approximately two months in both 2017 and 2018.
20. The respondent refused the application by a decision dated 28 April 2020 reasoning, *inter alia*:

'You have applied for a residence card on this basis four times. On each occasion your applications were refused. The first application was refused without a right of appeal. The three latter applications were refused with a right of appeal, although you chose not to appeal.

Your two previous refusal letters dated 26 October 2018 and 29 January 2019 respectively discussed at length the reasons why this Department

had concluded that will stay in Ireland was an attempt to circumvent the immigration rules of the United Kingdom.'

...

'As aforementioned in your previous refusal letters, this Department does not dispute the fact that you were living in Ireland with your father while he exercised his treaty rights there ...'

You applied for a visit visa, while you were living in Ireland, which was refused on 13 April 2017. In that application you claimed that you would be staying with your brother, who would financially support your stay. You also stated at this time that you are working at a car wash. This therefore contradicts the claim that you had been dependent upon your father since 2010.'

... However, this Department maintains the view that your stay in Ireland was an attempt to circumvent the Immigration Rules. Your representative states that your British sponsor moved to Ireland to become a painter and decorator. The only evidence you have submitted with past and current applications, which relate to his treaty rights in Ireland are that he worked in a car wash. There is no evidence to show that he worked as a painter and decorator. There is no known reason why anyone would need to move to Ireland to work in a car wash, when such employment is easy to obtain in the United Kingdom.'

### **Decision of the First-tier Tribunal**

21. The appeal was conducted as a remote hearing before the Judge sitting in Birmingham on 13 April 2021. Both the appellant and his father gave oral evidence. In refusing the appeal the Judge reasoned, *inter alia*:

'28. As I have said I am unable to find the Appellant to be a credible witness. I am further satisfied that there is no credible reason for the Sponsor to have travelled to Ireland to exercise Treaty Rights there other than to do so in an attempt to circumnavigate the Immigration Rules which both the Appellant and Sponsor will have known, on the balance of probabilities and given the number of applications made, the Appellant was unable to meet.'

### **Grounds of Appeal**

22. The appellant's grounds of appeal are not properly delineated into separate, particularised complaints identifying legal error, as required: *Nixon (permission to appeal: grounds)* [2014] UKUT 368 (IAC) and *Harverye v. Secretary of State for the Home Department* [2018] EWCA Civ 2848, per Hickinbottom LJ at [55]-[58] (obiter). They are inadequate for their purpose.

23. In granting permission to appeal Judge Rhys-Davies sought with care to distil the substance of the challenge advanced and observed, *inter alia*:

'In an otherwise commendably concise Decision, it is arguable that the Judge materially erred as alleged in the Grounds ... It is notable that despite hearing from the Sponsor, the Judge makes no reference to the Sponsor's evidence when considering Regulation 9(4).'

24. The respondent filed a Rule 24 response observing that the Judge correctly directed herself and further stating that the findings of fact were open to her. There is no engagement with the failure by the Judge to assess the evidence of the appellant's father.

### **Decision on Error of Law**

25. The appellant's personal history is addressed in detail above, because at its heart the respondent's decision is founded upon credibility: that his residence with his father in the Republic of Ireland was solely an attempt to circumvent the Immigration Rules by abusing the route to residence established by the CJEU in C-370/90 *R. v Immigration Appeal Tribunal, ex parte Secretary of State for the Home Department* EU:C:1992:296 [1992] 3 All E.R. 798 ('Surinder Singh').
26. Though seeking to address her reasoning in concise terms, and such approach is often to be commended, the reasoning was unfortunately too concise in this matter. An issue for consideration in the appeal was the father's reasons for relocating to the Republic of Ireland - was it a genuine effort to secure greater remuneration, or an attempt to aid his son in efforts to bypass relevant Immigration Rules? It is the father's credibility that is at the core of the appeal. The importance of his evidence is identified by his being asked 16 questions in cross-examination by Mr. Rahman on behalf of the respondent, almost all concerned with his relocation to the Republic of Ireland. In such circumstances, it was clearly a material error of law for the Judge to fail to adequately assess the father's evidence. Indeed, his evidence is neither noted nor expressly considered. The simple assertion that there was 'no credible reason' for the father's relocation fails entirely to identify why the reasons he detailed at the hearing, unidentified in the decision itself, were incredible. Such failure constitutes a material error of law.
27. Though Mr. Melvin was confident that the remaining grounds relied upon by the appellant enjoyed no merit, he accepted that the approach adopted in respect of the father's evidence was a material error of law.
28. In the circumstances, the only proper course of action is to set aside the decision of the First-tier Tribunal with no attendant preservation of any findings of fact.

### **Remaking the Decision**

29. I am satisfied that it is in the interests of justice to remit the hearing of the appellant's appeal to the First-tier Tribunal at Birmingham. I do so because I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such

that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal

30. Whilst it is for the First-tier Tribunal to issue relevant directions in respect of appeals before it, the appellant can properly expect the Tribunal to be aided by the filing of a supplementary, and detailed, written statement prepared by his father before the resumed hearing. Such evidence should address, *inter alia*, his employment and financial history in this country prior to his relocation to the Republic of Ireland; why he chose Mallow, a town with a population of 12,500 as a base for work, rather than nearby Cork with its population of 125,000; and the substance of the assessment he undertook as to the realistic prospects of work as a painter and decorator in Mallow in circumstances where some 6 months after his arrival he ceased such work. The appellant's present bundle is noticeably limited as to evidence of the father's employment and financial circumstances before he relocated to the Republic of Ireland.

### **Notice of Decision**

31. The decision of the First-tier Tribunal involved the making of an error on a point of law, and I set aside the Judge's decision promulgated on 28 April 2021
32. No findings of fact are preserved.
33. The resumed hearing in this matter is remitted to the First-tier Tribunal sitting in Birmingham.
34. No anonymity direction is made.

Signed: D O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Date: 22 April 2022