



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

Appeal Number: IA/49420/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22 August 2014**

**Determination**

**Promulgated**

**On 1 September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**MR MUHAMMAD JUNAID**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Aslam, Counsel instructed by Bedfords Solicitors

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

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Pakistan whose date of birth is recorded as 7 December 1984. On 12 November 2013 his application for a Residence Card as confirmation of a right to reside in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2006 was refused by the Secretary of State and the Appellant appealed. His appeal was heard on 17 March 2014 by Judge of the First-tier Tribunal Judge Boyd. In a determination promulgated on 31 March 2014 the appeal was dismissed on all grounds.
2. Judge Boyd did not find the evidence of the Appellant credible and in particular, though he found present dependency and membership of the

Sponsor's (his uncle) household, he did not find the prior dependency or prior membership of the Sponsor's household as required by Regulation 8(2) of the 2006 Regulations and as explained by the Upper Tribunal in the case of Dauhoo (EEA Regulations – Reg 8(2) [2012] UK UT79.

3. Additionally the judge did not go on to consider whether the Appellant's Article 8 claim, if any could succeed. That was because both parties in the First-tier Tribunal agreed that the issue did not arise in the absence of any removal directions.
4. On the findings that the Appellant did not meet the requirements of Regulation 8(2) the Appellant made application for permission to appeal to the Upper Tribunal appealed as well as on the basis that the judge made findings which were not pertinent to the appeal that was before him but more particularly related to the issue of human rights; it being submitted that those findings ought not to have been made.
5. The application for permission to appeal to the Upper Tribunal was initially refused but on renewal to the Upper Tribunal, on 23 June 2014, Judge Chalkley, granted permission. He did not think that there was any great merit in either of the grounds but went on to say, *"The parties cannot agree to exclude a judge from considering an Article 8 appeal where there are no removal directions and despite the lack of directions, he should have considered it. Permission is granted on the grounds set out in the application as well."* In other words Judge Chalkley granted permission on a basis not raised by the Appellant in the grounds.
6. Mr Aslam on behalf of the Appellant immediately took me to paragraph 22 of the determination of Judge Boyd. It reads as follows:

*"The background to this appears to be quite simply that this is a case of migration. The Appellant came to the United Kingdom on a visit visa and overstayed. It is my impression that he had no intention of returning to his home country of Pakistan. His reason for not returning is extremely weak and vague and I place no reliance upon it. He has siblings and his parents in Pakistan but since coming to the United Kingdom he has been receiving medical treatment. He has therefore been a financial burden upon the state in the United Kingdom. The implication is that the Appellant migrated to the United Kingdom not because there was any problem in Pakistan but for medical treatment which he would receive on the NHS at no cost. No evidence has been produced that his Sponsor has met the costs of any medical treatment he has received. I would again refer to the United Accountancy Services letter at document 76 where it was stated that the Appellant would not be claiming support from the state. This has proved to be incorrect."*

7. Mr Aslam was concerned that the judge effectively had made a finding that the Appellant had come to the United Kingdom in order to receive medical treatment and it was submitted that the entire claim was

deemed to be without merit on the basis that the Appellant had used the National Health Service in respect of his disability with that being the motivating factor in coming to the United Kingdom.

8. Initially, Mr Aslam submitted that there was no evidence before the judge that the Appellant had sought any treatment although Mr Aslam had to modify that submission when it was pointed out to him that there was evidence that the Appellant had made use of the National Health Service though there was no sufficient evidence that it was in consequence of his disability. Mr Aslam's submission was that the observations made by the judge impacted on his finding that the Appellant and Sponsor had not resided together in the same household prior to coming to the United Kingdom.
9. I agree with Judge Chalkley that there is in fact little merit in the submission. The findings in relation to the issue as to whether or not the Appellant and Sponsor were members of the same household is dealt with at paragraph 20. The reasons for making the finding are adequately explained. It was noted that the Sponsor left Pakistan when the Appellant was only about 7 years of age. The judge found that there was simply insufficient evidence. The judge recognised that there was evidence to support the Appellant in the form of an affidavit as well as the evidence of the Sponsor and Appellant but the judge was not prepared to afford to that evidence sufficient weight in the absence of documentary evidence, all the more so when even putting the Appellant's case at its highest it would have been 19 years since the Appellant and Sponsor were members of the same household.
10. Clearly the case of Moneke (EEA - OFMS) Nigeria [2011] UK UT00341 does not assist the Appellant. In that case it was held that membership of a household has the meaning set out in KG (Sri Lanka) [2008] EWCA Civ 13 and Bigia and Others [2009] EWCA Civ 79; that is to say it imports living for some period of time under the roof (not necessarily the same roof) of a household that can be said to be that of the EEA national for a time when he or she had such nationality. That necessarily required that whilst in possession of such nationality the family member has lived somewhere in the world in the same country as the EEA National, but not necessarily in an EEA state. Even at the time when putting the Appellant's case at its highest (though not found to have been the case) the Sponsor would not have been an EEA national when the Appellant and Sponsor might have been living in the same household. However, as I have already observed the judge did not find that they had ever been part of the same household and I do not find that the findings are affected in any way by the speculation on the part of the judge that the Appellant might have come to the United Kingdom in order to receive treatment; the Appellant was simply found to be a poor witness. He was found at paragraph 22 to be vague in his reasons for not returning to Pakistan and he had been found to lack credibility quite apart from the issue in relation to medical treatment in the assertion that he would not be claiming support from the state which was proved to be incorrect and I refer here to the final sentence of paragraph 22.

11. I come to the view that this is exactly the sort of appeal envisaged by the Court of Appeal in the case of VW (Sri Lanka) [2013] EWCA Civ 522 in which the Court of Appeal observed at paragraph 12:

*“Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with in others and then to use this as a basis for saying the judge’s decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain proper challenge to a judge’s finding of fact...”*

12. It may in this case the Appellant has sought to burrow out industriously an area where the judge has dealt rather more fully with an area but the point remains the same. What I do observe however were this matter were to come back before another tribunal, it should be underlined that the judge did not make a finding of fact that the Appellant had come to the United Kingdom in order only to receive medical treatment, but was speculating in the absence of any satisfactory explanation what the Appellant to come to the United Kingdom. Certain it was that the judge did not accept that there was a prior dependency or prior membership of a household.
13. It seems to me on the points upon which permission was granted, whilst it is clearly preferable for all matters to be dealt with in the one appeal, it is clear that the Appellant did not abandon any claim under Article 8 but that both parties had agreed a way in which the Appellant’s status in the United Kingdom would eventually be determined and the procedure to be adopted and followed if the appellant does not leave voluntarily. If the judge had been asked to deal with Article 8 ECHR and had refused to do so it seems to me that it is arguable that he would have erred. But where both parties agree and indeed continue to agree before me that there was no error of law then it would, in my judgment, be rather odd for me then to find an error of law; I do not do so. Whether the Appellant is now unlawfully in the United Kingdom given the findings of the First-tier Tribunal and which I uphold is not a matter upon which I am invited to make a finding but if the Appellant reserves his position pending a removal decision and the Secretary of State accepts the Appellant would be given a right of appeal then it seems to me it is a matter for the parties. Whether the Secretary of State decides to make a decision on the matter sooner rather than later is entirely a matter for the Secretary of State.

## **Decision**

The appeal to the Upper Tribunal is dismissed.

**Signed**

**Date**

**Designated First Tier Tribunal Judge  
(Sitting as a Deputy Judge of the Upper Tribunal)**