



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/05938/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 24th April 2014

Determination Promulgated
On 15th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR AHMED BADWY
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Anifowghe, Counsel
For the Respondent: Mr G Harrison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Egypt born on 6th October 1991. The Appellant applied for admission to the United Kingdom by virtue of European Community law as the family member of a European Economic Area national who is exercising, or wishes to exercise, rights of free movement under the Treaty of Rome in the United Kingdom. The Secretary of State noted that the Appellant had provided evidence that his uncle had been granted an EEA family permit in the United Kingdom and stated that his father was deceased and that his uncle provided him with funds on a regular basis. However, it was also noted that the Appellant had stated that he was a student, that he lived with his mother and sister, and that his grandfather lives in the same village. The Appellant is no longer a minor. The Secretary of State concluded

that the Appellant had not provided evidence to show that he was dependent upon his uncle, nor was he satisfied that he was dependent on an EEA national or a member of his/her household, and therefore was not an extended family member in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2006. The Secretary of State issued Notice of Refusal on 5th February 2013.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Moore sitting at Taylor House on 21st August 2013. In a determination promulgated on 6th September 2013 the Appellant's appeal was dismissed.
3. On 13th September 2013 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 27th September 2013 First-tier Tribunal Judge Mailer granted permission to appeal. Judge Mailer noted the Respondent's decision to refuse his application for a permit and noted that the First-tier Tribunal Judge was not satisfied that the Appellant had been sent regular monies as claimed by either his uncle or the EEA national, the uncle's wife. He was thus not satisfied that the Appellant was dependent on the EEA national or his uncle. The First-tier Tribunal Judge had found at paragraph 20 of his determination various credit payments had been made into the Appellant's account for the period 30th October 2012 to 11th February 2013 but on the evidence before him, he was not satisfied "*precisely who had made such payments*". He noted that the EEA national had claimed to have made regular payments to him, but that there was no reliable evidence corroborating that and the only record of any such payments was a document showing that on 14th November 2012 the sum of £2,000 was paid into the Appellant's account.
4. Judge Mailer noted that the grounds submitted that the findings at paragraph 20 were wrong, and that the payments were made from the uncle's account which were contained in the bundle produced by the Respondent's embassy visa section. Further, he noted that it was contended that the uncle could have explained the position had the judge requested evidence of who made the payments and that it was submitted that the judge should in any event have accepted that the money sent in by the Appellant's aunt-in-law was at the time he applied to join the Union, a citizen on whom he was dependent. The judge made a conclusion that it was arguable that the First-tier Tribunal Judge had failed to have proper regard to the evidence available which may have resulted in incorrect findings at paragraphs 20 and 24 of the determination.
5. On 14th October 2013 the Secretary of State served a Rule 24 response. That response is merely a holding document on the basis that the Secretary of State did not have the determination and therefore was unable effectively to comment.
6. On 19th November 2013 the matter came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal. I found that there was and that the appeal turned on the ability of the Appellant to show that he is dependent upon his uncle and his wife and for a legal analysis of what constitutes dependency and whether such analysis once defined is met and sustained by the

evidence produced within bank statements. I found that it was clear (and this was accepted by both legal representatives present before me) that the reference at paragraph 20 of the determination to payments varying between £1,500 and £3,985 was wrong and that the amounts made actually varied between £200 and £4,999. In such circumstances I accepted that it was possible that the judge had made a wrong analysis in fact as to the payments that had been made and for their purpose and that as a matter of fairness it was correct to find that there had been a material error of law in the determination of the First-tier Tribunal and to set aside that decision on the basis that the only issue outstanding was that set out within those findings and to give directions for the rehearing of the matter.

7. Consequently directions were sent out by the administration, recording that the issue outstanding in this matter was whether or not the Appellant was dependent upon his uncle and aunt as set out within my finding as to an error of law and it is on that basis that the appeal comes back before me. The Appellant has, pursuant to the directions that I gave, lodged an up-to-date bundle of documents, all of which I have considered. In particular they relate to bank transfers and there are copies of bank statements. The Appellant appears by his instructed Counsel Miss Anifowghe and the Appellant's Sponsor Mr Mohamed Badwy is also in attendance. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Evidence

8. Mr Badwy attended and gave evidence. I was taken to the confirmation of transfers from the National Westminster Bank to be found at pages 13 to 17 of the additional bundle and that those payments were made by the Sponsor to the Appellant via the National Bank of Egypt.
9. Mr Harrison cross-examined the Sponsor with regard to his business activities and payments made. Mr Harrison started by noting to the Sponsor that at page 19 of his bundle he had produced three pay slips from Marios Takeaway (Blackpool) Limited covering the periods 10th February 2013 to 24th February 2013, all showing that the Sponsor's net weekly pay amounted to £142.37. Mr Badwy confirmed they represented his net income from Marios Takeaway but that he left Marios in March 2013 and set up his own business with his wife entitled Hot Stuff. I am referred to the letter from his accounting services confirming this. Mr Badwy's business is not it appears a limited company, i.e. he is self-employed trading as Hot Stuff which I understand is a restaurant/takeaway business and that he has now traded for a year and he states that he earns a net profit of some £12,000 to £15,000 per annum although no accounts are available to me to confirm or deny these figures. He further confirms that his wife continues to work for Marios Takeaway earning £144 per week. No information is provided, nor suggestion made, of Mr Badwy or his wife having any additional income over and above the figures quoted herein.
10. Mr Badwy confirmed to Mr Harrison that not only did he have a nephew in Egypt but he also had a niece who was a student aged 15 and that she does not have to pay for her education, only for her books. He further confirmed that the five payments

made represent all the payments that he had made to his nephew in the past twelve months. When questioned as to how he can afford to make such payments Mr Badwy states that he has put the money aside each week and that the money was to cover the Appellant's rent, house refurbishment and college expenses.

11. The Appellant's wife Miss Garcia also attended and gave evidence. Miss Garcia advised that she is still working a sixteen hour week earning around £100 per week. Mr Harrison takes Miss Garcia to the bank statements exhibited at page 11 and 12 of the bundle, pointing out six pay slips had been provided all showing a net income of £100 per week. She confirms that she only has part-time earnings and that she also has a 2 year old child to support. It is put to her that a lot of her income is apparently going to Egypt to support the Sponsor's nephew and she confirms this and when asked as to how she feels about it, merely states the Appellant is in Egypt and needs help. She acknowledges that the Appellant's connection to her is solely through her husband's family. She further confirms that she would support his move to the United Kingdom and that if he came here he would help her and her child and that he would work. She confirmed that no other relatives of the Sponsor are supported in Egypt. When it is put to her as to how the Appellant's other family members are supported, bearing in mind the Appellant's mother does not work, she merely replies that she does not know this nor does she know whether or not it is the intention of the Appellant's sister to go on in later life to university.

Submissions/Discussions

12. Mr Harrison relies on the Notice of Refusal of 5th February 2013 and the Entry Clearance Officer's review of 10th June 2013. He acknowledges an explanation has been provided of the financial evidence and the paper trail of transactions through bank accounts and whilst concerned that some of it is out of date because it has been superseded by twelve months of trading by the Sponsor in his new business. He acknowledges that no documentation relating to that business has been provided. However he challenges whether or not the bank account transactions show dependency on behalf of the Appellant and submits that they do not. He asked me to refuse the application.
13. Counsel on behalf of the Appellant submits that there has been evidence produced to show some form of dependency prior to the application and his Sponsors have shown that the dependency continues. She submits that evidence has been produced to show that money to care for the Appellant's living expenses is being provided and contends that dependency has been shown that the payment of £4,999 was to set up the Appellant and pay his rent in advance and that payments of smaller amounts are provisions providing his allowance. She submits that his dependency and that the terms of Regulation 8 of the 2006 Regulations are met.

Findings

14. It is the contention of the Appellant's Counsel that the Appellant is financially dependent upon his Spanish aunt-in-law Miss Garcia and his uncle the Sponsor and relying on *Rahman C-83/11* submits that this dependency existed when he applied to

join them in the United Kingdom. It is clear that there has been a paper trail showing that payments have been made, including one particularly substantial amount of just under £5,000 to the Appellant by the Sponsor and Miss Garcia. It is difficult to establish the paper trail as to how that money came into their accounts, but they stipulate that this was through savings, albeit it is hard for the Tribunal to understand how a couple with very limited income, a 2 year old son to support and a new business to fund are able to provide the financial support to send money to the Appellant. The fact remains that payments have been made.

15. The witness statements relied upon are those provided to the First-tier Tribunal and I gave specific directions evidence was to be made available at rehearing to show there was dependency. That evidence has not been provided. What has been provided is an updated bundle showing the specific bank transfers that have been made, a copy of a lease dating back to 2011 and a purported declaration from the Appellant that he is dependent upon the Sponsor. I do no more than consider that document in the round. Whilst explanations have been given as to the payments made, there is still no reliable or credible evidence before me to demonstrate the claim that there is dependence by the Appellant, at the very least at the time when the Appellant applied to join the Sponsor in the UK. The conclusions reached at paragraph 24 by the First-tier Tribunal Judge are in fact ultimately, even allowing the Appellant the opportunity to revisit this matter, completely justifiable and ones in which the First-tier Tribunal Judge appears to have been entitled to reach. She found that the Appellant's uncle and his wife have at some time during the previous two years sent monies to the Appellant. However neither she nor I are satisfied that regular monies have been sent as claimed or he is dependent upon the EEA national or indeed his uncle. All that has been provided is an explanation clarifying the figures and the amount sent. That does not go to the nub of this matter, namely dependence. In such circumstances, I am not satisfied on the balance of probabilities that he meets the requirements of Regulation 8, the Immigration (EEA) Regulations 2006 and the Appellant's appeal is dismissed.

Decision

16. The appeal under the EEA Regulations 2006 is dismissed and the decision of the First-tier Tribunal is maintained.
17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date 12th August 2014

Deputy Upper Tribunal Judge D N Harris