



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10308/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On the 9th September 2015

Decision & Reasons Promulgated
On the 6th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

MR JAMEEL NAEEM
(Anonymity Direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chohan (Solicitor)

For the Respondent: Miss Brocklesby-Weller (Home Office Presenting Officer)

DECISION AND REASONS

1. It is the Appellant's appeal against the decision of First-Tier Tribunal Judge Beach dated the 9th March 2015, which was promulgated on the 11th March 2015.
2. The First-Tier Tribunal Judge had dismissed the Appellant's appeal against the Respondent's decision dated the 17th February 2014 refusing to issue him with a residence card as the extended family member of an EEA national exercising Treaty Rights in the United Kingdom.

3. Although First-Tier Tribunal Judge Beach accepted that the Appellant and his sponsor were now living together in the United Kingdom and that he was dependent upon his sponsor now whilst in the United Kingdom, she did not accept that the Appellant had been dependent upon the sponsor previously whilst the Appellant was living in Pakistan, or that they had previously been members of the same household in Pakistan. She found that the sponsor was funding the Appellant in order that he could come to the United Kingdom to study, rather than the Appellant being dependent upon him financially in Pakistan. She therefore dismissed the Appellant's appeal under the Immigration (European Economic Area) Regulations 2006.
4. The Appellant has now sought to appeal that decision to the Upper Tribunal, and permission to appeal was granted by First-Tier Tribunal Judge Andrew on the 5th May 2015. In the reasons for her decision, she stated that:

"2. I am satisfied that it is arguable that the judge did not adequately evaluate the evidence before her and did not apply the facts to the guidance in the case of Dauhoo (EEA Regulations-Reg 8 (2)) [2012] UKUT 79 (IAC).
5. In the Grounds of Appeal it is argued that the First-Tier Tribunal Judge overlooked relevant evidence that had been submitted in the form of money transfer receipts dated the 22nd December 2009, the 5th April 2010, the 9th April 2010 and the 3rd May 2010 which it is said were submitted with the initial application to the Respondent, the NIB bank statement of the Appellant in Pakistan showing money transfers from the EEA sponsor on the 22nd December 2009, the 5th April 2010, the 9th April 2010 and the 3rd May 2010, a utility bill dated the 30th July 2009 which it is said showed cohabitation at the same address for almost 3 months, the meter reading been dated the 30th July 2009 with the connection being dated the 10th May 2009, and birth certificates with what are said to be common addresses at the bottom of each of the birth certificates, which again it is argued proves membership of the same household.
6. It is further argued that the Judge failed to adequately evaluate the evidence before her,

in terms of the financial transfers and that although the Respondent in its initial refusal letter dated the 17th February 2014 had said that the Appellant already had enough money in his bank account not to be dependent upon the EEA sponsor, before the financial transfers had taken place. Enough evidence, it was argued, had been submitted for the Respondent and for the First-Tier Tribunal Judge to find that in fact those funds were sent by the EEA sponsor either for the Tier 4 application for funding the Appellant's studies or for his personal expenses or for family maintenance. It is argued that the Judge only considered two transactions of £2450 and £6480 at [13] of the decision and failed to consider a third transaction of £6435 in the EEA sponsor's Barclay's bank account at page 25 of the Appellant's bundle which was entitled "UK Tuition Visa".

7. It is further argued that the £2450 was actually sent by the EEA sponsor to the Appellant's NIB bank account for his "family maintenance" on the 1st December 2009 which is said to explain the balance in the Appellant's NIB bank account at the start of the statement and that the transaction clearly indicated that it was for "family maintenance". It is further said that the Appellant had mentioned in his witness statement that the EEA sponsor not only financially supported him personally, but his entire family and that the Judge had mistaken this transaction as being for the Tier 4 application rather than for family maintenance.

8. It is further argued that the reasoning given by the First-Tier Tribunal Judge in respect of her findings that the sponsor was simply funding the Appellant's studies rather than maintaining him were inadequate or insufficient and that the Judge has imposed too higher test. It is argued that the appropriate test is whether, as a matter of fact, the EEA national provides material support to the family member in order to meet the family member's essential needs. It is further argued that the fact that the sponsor is funding the Appellant's studies also showed that the Appellant satisfied Regulation 8 (2) (A) of the EEA Regulations and that education is a fundamental human right and is essential for the exercise of all other human rights.

Submissions

9. In his submissions on behalf of the Appellant Mr Chohan adopted and relied upon the Grounds of Appeal. He argued that the Judge had failed to take account of the money transfer receipts and the Appellant's NIB bank account showing payments into that bank account. I asked specifically whether or not the Judge had actually seen the money transfer receipts, as within the Grounds of Appeal, it was stated that these had not been included within the Appellant's bundle, and they were not contained within either the Appellant's or the Respondent's bundle in the file before me. He told me that these documents have been sent to the Home Office, but could provide no confirmation that in fact they were contained within the documentation that had been submitted to the First-Tier Tribunal Judge. However, he argued that the Judge had failed to take account of the Appellants NIB bank account, which he argued showed further payments being made to the Appellant over and above the transfers from the EEA sponsor's Barclay's bank account.

10. Mr Chohan argued that the Judge failed to take account of the Appellant's evidence that he and his family have been maintained for a long period of time by the EEA sponsor, running into a number of years, not just for a short period and that the first transfer from the EEA sponsor's bank account have been able specifically as being for maintenance, rather than for the Appellant's studies. He argued that the decision reached by the First-Tier Tribunal Judge was not the only decision open to her on the evidence and that she failed to properly assess the evidence and failed to take account of material evidence which was before her.

11. He further argued that the utility bill that had been submitted from 2009 was both in the names of the Appellant and the EEA sponsor, but he considered in this regard that the EEA sponsor had actually moved to the UK in August 2008, prior to the date of the utility bill. He further argued that the birth certificates did have the same address on them for the Appellant and the EEA sponsor and the Judge had failed to take account of this.

12. In her submissions on behalf of the Respondent Ms Brocklesby-Weller argued that the First-Tier Tribunal Judge had correctly directed herself in respect of all of the evidence before her and that the findings that she had made were open to her on the evidence. She argued that the money transfer slips were not before the First-Tier Tribunal Judge, not being in the Respondent's nor the Appellant's bundle, and not being shown on the PF1 document within the Respondent's bundle listing which documents that had actually been submitted and considered by the Respondent. She argued that it was open to the Judge to find that the transfer of money to the Appellant was to fund his tertiary education in the UK, rather than providing for his core needs in Pakistan. She further argued that there was not clear evidence that any money transfer to the Appellant was for his essential needs rather than for any luxury items or other expenses. She argued that the bank accounts submitted and statements only ran from December 2009, which was inconsistent with the Appellant's claim that there had been a long period of dependency running into years.

13. Ms Brocklesby-Weller argued that the historic birth certificates did not assist in improving membership of the same household in Pakistan, and that the Judge had considered the sole utility bill but found that it was inadequate in proving cohabitation within the same household and had given full reasons for her decision in that regard. She asked me to dismiss the appeal.

My Findings on Error of Law and Materiality

14. The original appeal hearing before the First-Tier Tribunal had been listed on the 3rd October 2014, but had been adjourned as a result of the EEA sponsor's wife being ill in Pakistan. It was listed to be heard again on the 27th February 2015, but the Appellant had written to the Tribunal on the 20th November 2014 indicating that his uncle would not be back from Pakistan until March 2015 but rather than asking for a further adjournment, he asked that the appeal be decided on the papers submitted. The case was therefore considered on the papers by First-Tier Tribunal Judge Andrew. This was despite the fact that the Appellant himself would still have been in the United Kingdom and would have been able to give evidence at the hearing, should he have chosen to do so. By

asking for the appeal to be dealt with on the papers, the Appellant had thereby deprived himself of the opportunity he would otherwise have had to answer any questions or deal with any concerns that First-Tier Tribunal Judge Andrew had regarding the evidence submitted. That was his choice and First-Tier Tribunal Judge Andrew was in the position of having to simply consider whether or not the requirements of Regulation 8 (2) were met of the of the Immigration (EEA) Regulations 2006 were met on the basis of the statements and documentary evidence submitted.

15. I am not satisfied that in fact the money transfer receipts referred to in the Grounds of Appeal were actually before First-Tier Tribunal Judge Andrew. Such money transfer receipts were not contained within either the Appellant's or the Respondent's bundle, and in the Grounds of Appeal it is stated specifically that they had not been included within the Appellant's bundle. Further, Ms Brocklesby-Weller is correct in stating that they were not actually listed within the PF1 document listing the documents considered by the Respondent in making the original decision. I therefore do not consider that the First-Tier Tribunal Judge can be criticised in failing to consider the money transfer receipts, when there is no evidence to show that these documents were in fact before her when she made her decision.
16. However, even if I am wrong in this regard, the money transfer receipts copies of which were attached to the Grounds of Appeal seeking permission to appeal from the Upper Tribunal simply reflect the payments into the Appellant's NIB bank account, as the money transfers were paid into that account and the money transfer receipts themselves do not indicate the purpose of the transfer. Further, there are no transfers prior to the 21st December 2009.
17. It is significant in this case that the Appellant had applied on the 19th June 2010 for Entry Clearance as a Tier 4 (General) Student and that the EEA sponsor, Mr S Z Khan was, it is agreed between the parties, funding those studies in the UK. Indeed in Mr S Z Khan's statement before First-Tier Tribunal Judge Andrew, he stated specifically at [7] that he had sent £6480 and £6435 to the Appellant's post office account on the 28th April 2010 and the 12th May 2010 respectively.

18. Although First-Tier Tribunal Judge Andrew has erred in failing to give adequate reasons at [13] for her finding that the two payments prior to the Appellant coming to the UK related to payments for his Tier 4 application, when the £2450 paid from the EEA sponsor's bank account to the Appellant's on the 1st December 2009 was actually labelled "family maintenance", I do not consider that any error in this regard is material, given that one transfer shown in the bank accounts labelled "family maintenance" does not in fact establish the Appellant was financially dependent upon the EEA sponsor whilst living in Pakistan, when set against the background of a claim that the EEA sponsor had been financially supporting the Appellant and his family for many years. There are no payments prior to December 2009 shown in the bank accounts statements, despite it being argued by Mr Chohan that in effect the EEA sponsor have been funding the Appellant and his family since the Appellant's father died when he was only 4 years old. This was not borne out in the documentary evidence produced for the appeal before the First-Tier Tribunal Judge.

19. It is significant in this regard that in the case of Moneke (EEA-OFM's) Nigeria [2011] UKUT 00341 (IAC) the Upper Tribunal found specifically that for the purposes of the EEA Regulations financial dependency should be interpreted as meaning that the person needs financial support from the EEA national for his or her in order to meet his or her essential needs. Without documentary evidence of any financial transfers prior to December 2009, one transfer stated to be for "family maintenance" in December 2009 would not establish that it was for the essential needs of the Appellant, and would have been insufficient documentary evidence to prove this aspect of the claim in any event.

20. On this basis it was open to the Judge to conclude that in fact this money was also to fund the Appellant's studies, although she has not clearly explained her reasoning, but as explained above such error was not material.

21. Further, although First-Tier Tribunal Judge Andrew further did err in failing to refer to the Appellant's NIB bank account statement, which clearly was before her and the payments from Mr Khan therein, the Appellant, although claiming long-term financial

dependency on the EEA sponsor, has failed within his statement to actually explain the payments within his NIB account, nor was the purpose of such payments adequately explained within Mr Khan's statement. There is no clear evidence as to why each of those individual payments were made, and given that the two were made within close proximity of the Appellant's application to come to study in the UK, there is no clear evidence that in fact that money was paid for maintaining the Appellant in Pakistan, rather than being linked to funding his study in the UK. With all payments from the Barclay's bank account and into the NIB account being within just a seven month period of the application to come to the UK to study, and no evidence of long-term prior dependency as claimed, it was perfectly open to the First-Tier Tribunal Judge to make the findings that she did, that the payments to the Appellant were in respect of him coming to the UK to study, rather than proving prior dependency in Pakistan.

22. The above errors in First-Tier Tribunal Judge Andrew's decision were therefore not material, as there was insufficient evidence before her, in any event, to actually prove on the balance of probabilities that the Appellant was financially dependent upon the EEA sponsor for his essential needs, and the documentary evidence in that regard did not bear out the claim that he had been financially supporting the Appellant and his family for many years. It was perfectly open to the Judge to find that on the evidence presented the sponsor was simply funding the Appellant's studies in the UK.
23. The sponsor funding the Appellant's studies in the UK does not amount to material support for his essential needs whilst living in Pakistan. It therefore does not prove the prior dependency element, as any such money transferred to him, even though he is at that stage living in Pakistan, would be for his use whilst in the UK, rather than meeting his essential needs in Pakistan.
24. First-Tier Tribunal Judge Andrew further at [14] did consider the one utility bill in July 2009, despite the concretion in the Grounds of Appeal, and did find that in itself is insufficient to show that the Appellant and sponsor had cohabited and been members of the same household in Pakistan. It has to be borne in mind in that regard that it is said that the EEA sponsor actually moved to the UK in 2008, and the fact that his name was

therefore on a utility bill in July 2009 does not actually in itself prove prior cohabitation prior to the EEA sponsor coming to the UK. The Judge was perfectly entitled to find that there were no tenancy agreement or land deeds to show that this was the sponsor's home address and that there was very little documentary evidence to show that the Appellant had lived there and that there was insufficient documentary evidence to show that the Appellant resided in the sponsor's home prior to coming to the UK. That was a finding that was perfectly open to her on the evidence presented.

25. In respect of the assertion that the Judge failed to take account of the birth certificates, although the Judge did not make reference to these, although there is an address given on the birth certificates which is the same address in Lahore, given the dates on these documents were produced by different dates, they do not actually show cohabitation between the EEA sponsor and the Appellant. The First-tier Tribunal Judge did not therefore materially err in failing to refer to these documents.

26. In respect of the assertion that the First-tier Tribunal Judge failed to apply the facts to the guidance in the case of Dauhoo (EEA Regulations-Regulation 8 (2)) [2012] UKUT 79, the Judge did consider the question of prior dependency, prior membership of that household, present dependency and present membership of the household as separate questions. Given her findings that neither prior dependency nor prior membership of the household had been established, although she did not specifically set out the 4 ways in which Regulation 8 (2) of the Immigration (EEA) Regulations 2006 could be met as set out within the case of Dauhoo, given her findings that neither prior dependency nor prior joint membership of a household have been established, any failure on her part to set out the different ways in which Regulation 828 (2) could be satisfied for an extended family member, was not material to the outcome of the case, as none of the four possibilities were in fact satisfied. The decision of First-Tier Tribunal Judge Andrew therefore does not disclose any material errors of Law and is maintained. The appeal is dismissed.

Notice of Decision

- 1) The decision of First-Tier Tribunal Judge Andrew does not disclose any material errors of Law and is maintained. The appeal is dismissed.

- 2) The First-Tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and no application for an anonymity order was made before me. No such order is made.

Signed

Dated 10th September 2015

RF McGinty

Deputy Upper Tribunal Judge McGinty