



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/27245/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 5th January 2015

**Decision & Reasons
Promulgated**

On 12th January 2015

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MASTER LUVNISH JUGGOO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer

For the Respondent: Mr T Hussain, of Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal (Judge Myers) allowing Master Luvnish Juggoo's appeal against the Secretary of State's decision of 13th June 2014 to refuse to issue him with a registration certificate as confirmation of his right of residence in the United Kingdom under community law.

2. For the purposes of this decision I shall refer to the Secretary of State as “the Respondent” and Master Luvnish Juggoo as “the Appellant”, reflecting their positions as they were before the FtT.
3. The Appellant is a citizen of Mauritius born 4th April 2005. He entered the UK on 16th November 2013 to live with his aunt who is his Sponsor. She is an Italian national exercising Treaty rights in the UK. The Appellant’s father is dead and it is claimed that his mother has transferred her parental right to the Sponsor.
4. The Secretary of State gave the following reasons for refusing the application. She was not satisfied that the Appellant is related to his Sponsor as claimed because there was not sufficient evidence of their relationship. Nor was she satisfied that he was dependent on his aunt before coming to the UK.
5. The Appellant’s claim is one of dependency on his Sponsor and in summary his history is as follows. He lived in Mauritius with his parents and a sister (also a minor). His father sadly died in October 2013 and after her husband’s death, the Appellant’s mother became seriously ill with depression. Consequently she was unable to work. It is reported that she cannot look after herself, let alone the Appellant and his sister, and she is being cared for by her 70 year old mother.
6. As there was no-one to care for the two children, it was agreed that the Appellant and his sister would come to the United Kingdom to live with the Sponsor and her sister (another aunt) respectively.
7. When the matter came before the First-tier Tribunal, the Judge made findings in favour of the Appellant on the nature of the relationship between the Appellant and his EEA national Sponsor and on the dependency issue. Having done so she allowed the appeal outright.
8. The grounds granting permission state as follows:

“It is not arguable that Judge Myers erred in her examination of the evidence as to the nature of the relationship between the Appellant and the EEA national and the dependency issue. Judge Myers made findings on these matters that were open too her on the evidence including the documentary evidence and there is no arguable error of law in her approach.

It is arguable that Judge Myers made an error of law when she allowed the appeal rather than referring the matter back to the Secretary of State for the extensive examination of the Appellant’s circumstances required by Regulation 17(5). The Secretary of State had not had the opportunity to conduct that examination and it is arguable that following the guidance in *Ihemedu (OFM’s - meaning) Nigeria 2011 UKUT 340* the matter should have been remitted back to the Secretary of State to enable her to conduct the necessary extensive examination.”

The UT Hearing

9. Before me Mr Hussain on behalf of the Appellant accepted that the Judge had erred in allowing the appeal outright, rather than referring it back to the Secretary of State as set out in ground 3 of the grant of permission. It was agreed by both parties therefore that the appropriate course would be for the decision of the First-tier Tribunal Judge to be set aside for legal error and for the Secretary of States appeal to be allowed to the extent that the matter be remitted to her to enable her to conduct the necessary extensive examination required by Regulation 17(4) of the EEA 2006 Regulations. That appears in my judgment to be the correct course.
10. Mr Hussain and Mrs Pettersen both asked that I note in my determination, the fact that the Appellant travelled to the UK with his sister who is also a minor. It would seem that one aunt is taking care of the Appellant and another aunt is taking care of the Appellant's sister. Mr Hussain did mention that he does not represent the Appellant's sister but quite properly is concerned that there should be consistency between the Appellant and his sister. I am aware that the Appellant's sisters appeal was allowed in the FtT and that the Respondent has been granted permission to appeal to the UT on that case as well. It may well be appropriate for the two appeals to be linked at some point.

Decision

11. So far as this appeal is concerned the decision of the First-tier Tribunal is set aside for legal error. The Secretary of State's appeal is allowed to the extent that the matter is remitted to her to enable her to conduct the necessary examination in accordance with Reg 17(4) EEA Regulations.

Signed

Date

Upper Tribunal Judge Roberts