



IAC-FH-AR-V1

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

Appeal Number: OA/00489/2014

THE IMMIGRATION ACTS

Heard at Field House
On 5 October 2015
Prepared 5 October 2015

Decision & Reasons Promulgated
On 9 October 2015

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MUHAMMED HASEEB JAVAID

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

Representation:

For the Appellant: Mr A Chohan, Counsel, instructed by Immigration Chambers
(Ilford)

For the Respondent: Mr A C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, born on 21 January 1993, appealed against a decision of the Entry Clearance Officer, Islamabad, made on 4 December 2013 to refuse an application for an EEA family permit as the other family member of a German national, Mr Khurram Javaid, who is exercising Treaty rights in Britain. His appeal was heard by Judge of the First-tier Tribunal Talbot on 13 April 2015 and dismissed. The appellant now appeals, with permission, against that decision.

2. In paragraph 7 onwards of the determination the judge set out the facts in this case, stating that the sponsor was the appellant's maternal uncle who has lived in Germany between 1998 and 2011 when he had relocated to Britain. He had obtained German nationality in 2004. He lives here with his wife and three young children and his parents in a rented four bedroom house working as a security officer earning between £1,000 - £1,200 per month. His wife works in a boutique. The appellant lives in Pakistan with his parents and two younger siblings. His father had worked as a store man in a factory for about nineteen years and the appellant has been attending university since 2011 and was due to finish his degree in 2015. For the first three years of his life the appellant had lived apart from his parents as they were working in another city: he had lived with his maternal grandparents and the sponsor. After 1998 he had continued to live with his parents, siblings and grandparents and about ten to fifteen years ago the family had moved to their current home in Lahore which had been purchased by his grandparents. His grandparents had joined the sponsor in Britain in August 2013 and the appellant continued to live with his parents and siblings in the same accommodation. They do not pay any rent to the appellant's grandparents.
3. As the sponsor is an only son he has been nominated to become the owner of the house in Lahore when his parents die. He has control over the house and when repairs are to be done he sends money to the appellant's parents to pay the costs.
4. It was claimed that the sponsor had a particularly close relationship with the appellant as he had lived with him when he was small and was therefore sending money to him which he intended particularly to pay for his studies as the appellant's father did not earn much and would not be able to afford the costs. The evidence was that since July 2013 the sponsor had been sending monthly amounts of £100 through a money transfers service directly into the appellant's bank account. Prior to that the sponsor was sending money through people travelling to Pakistan.
5. The judge noted that the application for a family permit had been made so that the appellant could visit the sponsor in Britain for two months during his university holidays as they had not wanted him to miss any of his education, but while he was here the sponsor wanted him to use his time to look over courses in Britain with a possible view to continuing his studies over here.
6. The refusal stated that the appellant was not a member of the sponsor's household and lived in a property that was owned by his grandparents and there was no supporting evidence to show that the sponsor paid the household bills. There was insufficient evidence of dependency on the sponsor who himself earned a modest income and the appellant's day-to-day needs appeared to be met by his father: these were merely supplemented by the sponsor who paid his university fees.
7. At paragraphs 15 onwards the judge set out his findings.
8. In considering the position of extended family members he referred to the decision of the Court of Appeal in **Bigia [2009] EWCA Civ 79** and the Upper Tribunal

determinations in MR (Bangladesh) [2010] UKUT 449, Moneke (Nigeria) [2011] UKUT 00341 and Ihemedu (Nigeria) [2011] UKUT 00340.

9. He noted the amended wording of Regulation 8(2) which made it clear that it was not necessary for an appellant to have resided in another EU state where the sponsor was also resident. However, it was necessary for the appellant to establish that he was a member of the sponsor's household or dependent upon him.
10. The judge then went on to set out the conclusions of the Tribunal in Moneke and the meaning of the dependency in the context of the Regulations. In particular he noted that financial dependency was to be interpreted meaning the person needed financial support from the EEA national in order to meet his or her essential needs, not in order to a certain level of income.
11. He quoted from the determination in Moneke where it was stated that:

“Nevertheless when ... able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.”
12. Applying the guidance in the cases which he had cited the judge then went on, in paragraphs 23 onwards, to set out his findings and conclusions. He accepted that the appellant had been a member of the sponsor's household prior to his relocation to Germany in 1998 but at that time the sponsor was not an EEA national and so that was not relevant to the appellant's entitlement under the Regulations. He went on to say that it was equally clear that the appellant had not been a member of the sponsor's household since the sponsor acquired German nationality in 2004. The fact that the sponsor had been nominated to inherit the property in which the appellant and his parents are living when his grandparents died did not mean that the appellant was a member of the household of the sponsor who lived thousands of miles away.
13. He then focused on the issue of dependency and the documentary evidence which had been provided and stated in paragraphs 25 onwards:

“25. There is evidence before me (in the form of remittance invoices and the appellant's bank statements) of regular monthly remittance of £100 by the sponsor to the appellant from 27.7.13 up to the present. However, I need to assess the material evidence or decency at or prior to the date of decision (4.12.13) and cannot therefore consider post decision evidence (Except insofar as it sheds light on the situation at the date of decision). The only documentation constituting supporting evidence of dependency at or before the date of decision is therefore the evidence of monthly remittances from the end of July 2013. I am not satisfied on the evidence before me that regular remittances were sent for the appellant

before that date. The sponsor said that he sent money through people travelling to Pakistan but is not clear how often this occurred. Nor is it clear why he would not have made remittances through money transfer arrangements before July, if he wished to make regular payments.

26. Both the sponsor and the appellant himself said in their witness statements that he (the appellant) had been dependent on his uncle since his childhood. If this was the case, I would expect to have more supporting evidence of this. The sponsor was keen to emphasise that he had control of his father's house in which the appellant and his parents are living, but failed to properly explain how this control was exercised. He gave one example of paying repair bills for the house but there was no supporting evidence of this. The sponsor stated that the money he sent his nephew was not just to cover his study costs but there was no detail as to what additional expenses his payments were designed to cover. Given that the sponsor himself has a fairly modest income (as indicated by his receipt of housing benefit and tax credits), I do not accept that he would have sent money to the appellant which was not earmarked for particular purposes. I accept that the appellant's father earns a modest income and I accept that the sponsor has taken it on himself to support his nephew's higher education studies in Pakistan. However, I do not accept that the sums sent by the sponsor are to meet his 'essential living needs' and I do not consider it most likely that it is his own father who is responsible for his maintenance in this respect. Taking into account the judicial guidance quoted above, I therefore conclude that the appellant has failed to provide sufficient evidence of dependency within the meaning of the EEA Regulations and he therefore does not qualify as an 'extended family member'. For these reasons he is not entitled to an EEA Family Permit."
14. The grounds of appeal pointed to the fact that the judge had said that he was satisfied that the appellant was a member of the household prior to the sponsor's relocation to Germany but that he had failed to consider the evidence that the sponsor had acquired German nationality in 2004, had travelled to Pakistan on a number of occasions and had lived in Pakistan for three years between 2008 and 2011 during which time the appellant had been a member of the sponsor's household.
15. They went on to say that the sponsor had been nominated to inherit the house in Pakistan and the fact that there were no remittance slips was because during the period between 2008 and 2011 the sponsor was in Pakistan. They asserted that the appellant had been dependent on the sponsor since childhood. It was stated that the judge had failed to calculate the income and had failed to take into account the consideration that the appellant had two other siblings in whom the appellant's father was financially maintaining from his income. They were also in education and calculating their tuition fees and their living expenses it was clearly acceptable that the appellant's father's income alone would not be enough for the appellant to manage his studies and living costs.
16. Permission to appeal was granted by Judge of the First-tier Tribunal A K Simpson who focussed on the fact that the judge had not specifically referred to the period between 2008 and 2011 when the sponsor had been in Pakistan.

17. At the hearing of the appeal before me Mr Chohan emphasised that the appellant's mother, father and siblings lived in the maternal grandfather's house and that the maternal grandparents had come to Britain in 2013 to live with the sponsor. He stated that the grandfather of the appellant had been the head of the household and that he had owned the house and that money had been sent to him before he came to Britain to maintain the household. The appellant's father worked in a factory as a manual labourer and the maintenance had been for the appellant's education rather than to sustain the household. He referred to the evidence before the judge that the sponsor had lived in Pakistan between 2008 and 2011 and emphasised that the sponsor had maintained the appellant since childhood, supporting the household in Pakistan and supporting the appellant's parents. He argued that it was for the judge to ask further questions regarding the income of the sponsor and the money which had been sent to Pakistan. He stated that there was enough evidence however to show that the sponsor was maintaining the appellant.
18. In reply, Mr Avery stated that there was a lack of evidence to support the assertions made and stated there was nothing to show that the sponsor had lived in the same house when he had returned to Pakistan. He emphasised that the household was that of the grandparents and stated that the appellant had not discharged the burden of proof upon him.

Discussion

19. With the grounds of appeal there was some further documentary evidence produced showing that certain repairs to the house had been paid for by the sponsor and also statements from the sponsor and the sponsor's father - the appellant's grandfather. The appellant's grandfather stated that:

"My son would send money on my name when I was in Pakistan for Mohammed Haseeb Javaid. As Mohammed Haseeb Javaid was a minor I would receive money on his behalf for his studies and living costs."
20. There were also some payment slips for the sponsor which postdated the decision and before the hearing some bank statements had been produced as well as photographs of the appellant and the sponsor.
21. However, the documentary evidence that had been before the Entry Clearance Officer and before the judge included only a bank statement, a sponsorship declaration and evidence that the sponsor is seeking work in Britain.
22. It is clear from the determination in **Moneke** that detailed evidence needs to be provided to show dependency and sufficient to bring an appellant into the category of extended family member. That evidence is simply lacking in this case. There are no detailed schedules showing the money which was sent to Pakistan and when it was sent, what income, if any, the sponsor had while in Pakistan between 2008 and 2011 and indeed what surplus income he has after providing for his wife and children and the rent for a four bedroom house as well as providing for his parents

here which would enable him to maintain the appellant in Pakistan. This is particularly relevant given the very modest earnings of the sponsor.

23. Mr Chohan appeared to argue that it was for the judge to have made enquiries regarding the sponsor's income and indeed other relevant matters, but the reality is that it is for the appellant to prepare his own case and to show how he meets the requirements of the Regulations.
24. The reality appears to be that the head of the household in which the appellant was living was his grandfather who owned the house and, of course, still does. It was only in 2013 that the appellant's grandparents joined the sponsor in Britain. While it is accepted that money was sent to Pakistan to the appellant's grandfather, the likelihood surely that that money went to the appellant's grandfather to spend on maintaining the household and not merely for the appellant. But in any event the evidence of what money was sent is scant. Moreover, the reality is that the appellant's father appears always to have worked. While it may well be the case that his earnings are modest, there is nothing to indicate that he is not paying for the essential needs of his family including the appellant.
25. It is up to the appellant to put forward cogent evidence to show that his essential needs were being met by the sponsor rather than by other family members. The relevant evidence of remittances and the detailed analysis of the family's budget and indeed that of the sponsor here has simply not been provided and the burden of proof has not been discharged by the appellant.
26. It is clear from the file that the judge recorded the evidence before him. While there is evidence that the sponsor spent time in Pakistan between 2008 and 2011, there is nothing to indicate that he was supporting the household during that time. Indeed, there is nothing to show that he was living in the household at that time other than the assertions made by him at the hearing. That however I consider is not a material matter when there is so little evidence to show that it is the sponsor who is maintaining the appellant and providing for anything other than his university fees and I consider that the conclusions of the judge were entirely correct and in particular his statement that he did not accept that the sums sent by the sponsor were to meet the appellant's "essential living needs".
27. I therefore find that there is no material error of law in the determination of the Judge of the First-tier Tribunal and find that his decision dismissing this appeal shall stand.

Notice of Decision

The appeal is dismissed under the immigration rules.

Signed

Date

Upper Tribunal Judge McGeachy