



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00129/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 March 2016

Decision & Reasons Promulgated  
On 31 March 2016

Before

**DEPUTY UPPER TRIBUNAL JUDGE FROOM**

Between

**MUHAMMAD JAWAD VIRK**  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 25 December 1981. On 21 June 2014 he made an application for a Residence Card as the extended family member of his cousin, Mr Saqib Ali Qureshi, a Dutch national exercising Treaty rights in the UK. The application was refused for reasons set out in a letter dated 24 November 2014 which can be briefly reduced to the point that the appellant had not provided sufficient evidence to show he was dependent on his cousin. The appellant appealed to the First-tier Tribunal and elected to have his appeal decided on the

papers without an oral hearing.

2. In a decision promulgated on 30 July 2015 Judge of the First-tier Tribunal G Jones QC dismissed the appeal. He said the appellant had “adduced no documents to be relied upon at the appeal”, although he had provided a witness statement and also a brief statement from his cousin. The judge was not satisfied there was any familial relationship between the appellant and his cousin due to the fact the expression “cousin” is not necessarily synonymous with a blood relative in Pakistani culture. He found the appellant was not a member of his cousin’s household before coming to the UK in 2011 or that he was a member of his cousin’s household in the UK.
3. Permission to appeal was refused by the First-tier Tribunal but granted on a renewed application to the Upper Tribunal. It was arguable the Judge had erred in two ways: (1) by treating the relationship as being in issue given it was not raised in the reasons for refusal letter; and (2) by failing to consider financial dependency as an alternative to membership of the same household and overlooking the evidence of two remittances from the cousin to the appellant in June 2011 and payments from the cousin to the appellant in 2014.
4. The appellant wrote to the Tribunal on 10 March 2016 requesting a decision on papers. The Tribunal replied to his letter the same day explaining the hearing would go ahead as the respondent may wish to make submissions and that a decision would be made on the basis of the documents in the file.
5. Ms Fijiwala made brief submissions, which I have recorded.

### **Error of law**

6. Ms Fijiwala did not argue the Judge’s decision was not vitiated by error of law and I agree with her.
7. The Judge erred on a fairness point by raising a new issue, not taken against the appellant in the refusal letter, without giving the appellant an opportunity to present evidence on the issue. There was some evidence in the form of the family registration to confirm the relationship in any event, which the Judge did not address.
8. He also erred by limiting his consideration to membership of the same household. The EEA Regulations read in relevant part as follows:

#### **“8. – “Extended family member”**

(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and –

- (a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;
- (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
- (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household."

9. In *Dauhoo (EEA Regulations – reg 8(2)) Mauritius* [2012] UKUT 79 (IAC) the Upper Tribunal explained the various permutations available to applicants seeking to show they are extended family members under Regulation 8(2):

"Under the scheme set out in reg 8 (2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an "extended family member" in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK:

- i. prior dependency and present dependency
- ii. prior membership of a household and present membership of a household
- iii. prior dependency and present membership of a household;
- iv. prior membership of a household and present dependency.

It is not necessary, therefore, to show prior and present connection in the same capacity: i.e. dependency- dependency or household membership-household membership ((i) or (ii) above). A person may also qualify if able to show (iii) or (iv)."

10. As noted, the Judge only considered membership of the same household before and after the appellant came to the UK. He did not consider the assertions made and evidence submitted regarding dependency.

11. I therefore set aside the decision of Judge Jones.

### **Re-making the decision**

12. The appellant was advised in standard directions that, if an error of law were found, the Tribunal may go on to re-make the decision. This point was made again to the appellant in response to his request for a decision on the papers. The appellant has chosen not to attend his appeal hearing and not to file further evidence. The only documents available are those filed in advance of the hearing in the First-tier Tribunal. Given the appellant's preference for a decision on the papers (in both Tribunals) I saw no reason to adjourn. I proceeded to hear the appeal so as to re-make the decision.

13. I have read the documents contained in the respondent's bundle, the witness statements and the two remittance slips.

14. I shall proceed on the basis the appellant and his cousin are related. There is no limitation to the type of relationship which would qualify.
15. Ms Fijiwala asked me to dismiss the appeal on the basis that none of the four possible permutations identified in *Dauhoo* applied.
16. The burden of proof is on the appellant with regard to any assertions of fact which he makes and the standard of proof is the civil standard of a balance of probabilities. I may consider evidence about any matter which I think relevant to the substance of the decision, including evidence which concerns a matter arising after the date of decision.
17. Guidance has been given on the interpretation and application of Regulation 8(2) in a number of cases.
18. In *Moneke (EEA – OFMs) Nigeria* [2011] UKUT 00341 (IAC), the Upper Tribunal said the requirements to show dependency or membership of the same household must be on a person who is an EEA national at the material time.
19. In *Moneke (EEA – OFMs – assessment of evidence) Nigeria* [2011] UKUT 00430 (IAC), the Upper Tribunal reminded Tribunals that the supporting evidence should be scrutinised with some care. In determining the appeals in that case, some weight was given to the fact the appellants had misrepresented their intentions when seeking entry as visitors.
20. In *Reyes (EEA Regs: dependency)* [2013] UKUT 314 (IAC), the Upper Tribunal said:

“19. From the above, we glean four key things. First, the test of dependency is a purely factual test. Second, the Court envisages that questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family. It seems to us that the need for a wide-ranging fact-specific approach is indeed enjoined by the Court of Appeal in SM (India): see in particular Sullivan LJ’s observations at [27]-[28]. Third, it is clear from the wording of both Article 2.2 and regulation 7(1) that the test is one of present, not past dependency. Both provisions employ the present tense (Article 2.2(b) and (c) refer to family members who “are dependants” or who are “dependent”; regulation 7(c) refers to “dependent direct relatives...”). Fourth (and this may have relevance to what is understood by present dependency), interpretation of the meaning of the term must be such as not to deprive that provision of its effectiveness.”
21. In *Lim (EEA – dependency)* [2013] UKUT 00437 (IAC), the Upper Tribunal considered the meaning of dependence and noted the Court of Justice had expressly approved

dependency of choice in the form of choosing not to take up employment.

22. The evidence of prior membership of a household consists of the bald assertions in the statements of the appellant and his cousin. It was absent from the affidavit of sponsorship made by Mr Qureshi on 9 June 2014. There are no documents supporting the assertion. The reference in paragraph 3 of Mr Qureshi's statement to visiting Pakistan after moving to the Netherlands at a time that the appellant was residing with his cousins also undermines the notion that the appellant was residing in Mr Qureshi's household. I find as fact that he was not.
23. As for prior dependency, the sole evidence, apart from assertions, consists of two remittance slips. These purport to show Mr Qureshi sending the appellant £1198 on 6 April 2011 and £999 on 30 June 2011. The statements do not make specific reference to these remittances and only refer in general to remittances. No information has been provided as to why these amounts were sent to the appellant. There is reference in the statements to Mr Qureshi arranging the appellant's studies but I cannot speculate this was the reason for the money being sent. Standing in isolation these two documents are not sufficient evidence to show regular remittances to support the appellant in Pakistan. The statements suggest the appellant was primarily supported by Mr Qureshi's family. There is no evidence showing the money mentioned in the remittance slips leaving Mr Qureshi's account or being received in Pakistan by the appellant, let alone what he used the money for. I am not satisfied the appellant has established he was dependent on his cousin before coming to the UK.
24. It follows that the requirements of the Regulations are not fulfilled. I should say that I would also find the appellant has not shown dependency or membership of the same household in the UK. Whilst assertions are made in the statements and there is evidence of Mr Qureshi transferring money to the appellant's Lloyds bank account, this evidence does not satisfy me the dependency is genuine. I note that the bank statements give the appellant's address as 21 [ ], Hounslow, which is Mr Qureshi's address. However, the appellant now gives his address as 724A [ ], Hounslow. There is no independent evidence showing this is also the address now occupied by Mr Qureshi. It would be a very straightforward matter to provide such evidence and I draw an adverse inference from the failure to present any such evidence given the centrality of the issue to the appeal.
25. The appeal is dismissed.

### **NOTICE OF DECISION**

The First-tier Tribunal made a material error of law and its decision is set aside. The following decision is substituted:

The appeal under the EEA Regulations is dismissed.

**Signed**

**Date 14 March 2016**

**Judge Froom,  
sitting as a Deputy Judge of the Upper Tribunal**