



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

Appeal Number: IA/07608/2015

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision and Reasons**

**On 8 January 2016**

**Promulgated**

**Prepared on 11 January 2016**

**On 1 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**MUHAMMAD LATIF  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Ms Hashmi, Solicitor, Mamoon Solicitors

For the Respondent: Mr Kingham, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, born 1 January 1955, is a citizen of Pakistan.
2. The Appellant entered the UK as a visitor on 26 March 2007. His leave expired on 13 September 2007 without any attempt being made to extend, or to vary it.

3. On 29 October 2014, as an overstayer, the Appellant applied to the Respondent for the issue of a residence card to confirm a right of residence asserting by reference to Regulation 8 of the Immigration (European Economic Area) Regulations 2006 ["EEA Regulations"] that he was an extended family member of the sponsor ["EFM"].
4. That application was refused on 10 February 2015 because the Respondent was not satisfied that the Appellant had been a member of the sponsor's household, or dependent upon him, when he lived in Pakistan, prior to travelling to the UK.
5. The Appellant appealed to the First Tier Tribunal against that refusal, and his appeal was heard and dismissed by Judge Kempton in a decision promulgated on 29 May 2015.
6. The Appellant sought permission to appeal that decision to the Upper Tribunal. Permission was refused by the First Tier Tribunal by way of decision of Judge Ford of 27 August 2015 on the basis that the grounds amounted to no more than a disagreement with the decision.
7. The application for permission to appeal was renewed by the Appellant to the Upper Tribunal on further grounds. Permission was granted by Upper Tribunal Judge Goldstein on 22 September 2015 on the basis it was arguable that Judge Kempton had not taken into account relevant evidence, which might have led to a different outcome.
8. The Respondent served a Rule 24 response to the grounds of appeal dated 6 October 2015 in which she asserted that there was no material error of law.
9. Neither party has applied for permission to rely upon further evidence pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008.
10. Thus the matter comes before me.

#### Regulation 8 - evidence overlooked?

11. The Appellant and sponsor are brothers. The Appellant is the elder brother by some 17 years. They grew up together in their parents' household, and then in due course as adults left that household to make their own careers. The sponsor travelled to Holland in about 1995/6, and acquired citizenship of the Netherlands in about 2000/1. He then moved to the UK in about 2000/1, and he has lived here ever since.
12. The Appellant travelled to Abu Dhabi and built a business there. He says, and it was not disputed before the Judge, that he lost that business through the fraud of his partner, and in addition found himself imprisoned in 2006. The sponsor's claim to have travelled to Abu Dhabi, arranged for the Appellant's release from prison in Abu Dhabi, and then to have taken him back to Pakistan to their parents' home, because the Appellant's health had deteriorated was also not disputed, although the

Appellant had accepted on 9 March 2007 that he had in fact been deported from Abu Dhabi [F1]. The sponsor accepted in oral evidence [RoP] that between 2006 and March 2007, the Appellant was living in Pakistan as a member of his parents' household along with his own wife and children, and another brother, and his family.

13. In 2005 however the Judge found that the Appellant had travelled to the UK as a visitor from Pakistan, and had then returned to Pakistan [8].
14. The Appellant offered no evidence to the First Tier Tribunal, whether written or oral, and it was asserted on his behalf that he was unfit to do so as a result of his mental condition.
15. A medical report from a consultant psychologist, Dr Irfan, dated 15 March 2015 was produced in evidence [ApB p15], and the Judge considered it [18]. Whilst she accepted that the Appellant had genuinely been diagnosed with a serious mental health condition, she noted that there was no evidence that he was receiving the majority of the treatment recommended in that report. Although the Appellant had presented himself upon attendance at the hearing in the same manner that had been observed by the consultant, i.e. entirely unresponsive and uncommunicative, she expressed concern that there was no evidence to suggest that this was the manner in which he had behaved between 2007-2015. (Although the Judge appears to have overlooked it, the report noted that the Appellant had no prior history of psychiatric diagnosis and had never previously been prescribed with anti-depressant medication or tranquillisers.) What the Judge did not remark upon directly, but was presumably the basis for her comment, was the record of the Appellant's interview by the ECO in Islamabad on 9 March 2007 [F1]. He was clearly responsive and communicative at that date, so however unwell he may have been then, his current condition represented a serious subsequent mental collapse, which on the face of the report had not resulted in the Appellant seeking any medical help prior to March 2015.
16. Although there was a large volume of evidence about the health of the Appellant's son who was living in Pakistan and who had suffered a stroke the Judge considered this to be irrelevant, save that it demonstrated the family were able to access "very good medical facilities in Pakistan".
17. Thus the Judge rejected the proposition that the Appellant satisfied the requirements of Regulation 8(3) on the grounds of his health. There is no challenge to that decision before me.
18. Given the date of the sponsor's acquisition of citizenship of the Netherlands the Appellant could not hope to establish that he was ever a member of the sponsor's household outside the UK, at a time when he was an EEA national. Ms Hashmi accepted this before me, although it was a point that was argued by her before the First Tier Tribunal, and is

also a claim that was made in the renewed grounds of appeal submitted to the Upper Tribunal.

19. Thus under Regulation 8 (2) the appeal turned upon the short point of whether the Appellant could establish that in the period immediately before he travelled to the UK in March 2007 he was dependent upon the sponsor, before there needed to be any consideration of the Appellant's position since he had arrived in the UK; Dauhoo (EEA Regulations – Reg 8(2)) [2012] UKUT 79.
20. Ms Hasmi accepted that no bank statements had been produced in evidence for any bank account held by any member of the family in either UK or Pakistan for the relevant period, and that none of the volume of money transfer receipts produced [ApB p104-125] related to that period, since the earliest is dated March 2011. Nor were there produced for any relevant period any tax returns for any adult member of the family then living in Pakistan. Thus, as she accepted, no documentary evidence was produced at all to the First Tier Tribunal in order to demonstrate the financial positions of the adult members of the household in Pakistan of which the Appellant was said to be a member at the relevant time.
21. Thus there was no basis for the claim that was made in the renewed grounds of appeal submitted to the Upper Tribunal, that the Judge had overlooked documentary evidence that corroborated the assertion that the Appellant was financially dependent upon the sponsor in the relevant period.
22. Accordingly, the Judge was confronted with a situation in which there was only a bald assertion by the sponsor that he had financially supported the Appellant in the period 2006 – March 2007, for which he was unable to provide any details. The sponsor gave no details of the financial support that he claimed to have provided to the Appellant in either his witness statement, or in the course of his oral evidence. To the extent that the renewed grounds of appeal submitted to the Upper Tribunal suggest the contrary, there is no evidential foundation for them.
23. On the other hand, whilst replacement copy bank statements for the bank accounts maintained by both the sponsor, and the Appellant, and their brother, and their father, at the time would have been available to the sponsor from the issuing banks, if the originals had been lost in the interim, none had been produced in evidence. Moreover, copy records would no doubt have been available from any money transfer agency used by the sponsor to remit funds to Pakistan in the relevant period if they too had been lost subsequently, and again none for the relevant period had been produced in evidence.
24. The sponsor did not seek to address in either his witness statement, or in his oral evidence the record of the Appellant's interview on 9 March

2007, when the Appellant had not claimed to be dependent upon the sponsor, and had claimed to be financially independent. Asked what his occupation and income were, he had replied "*I'm in agriculture. I have lands. 1 lakh per month.*"

### Regulation 8 - Error of Law?

25. As set out above, the Judge rejected the proposition that the Appellant satisfied the requirements of Regulation 8(3) on the grounds of his health. There is no challenge to that decision before me.
26. Although the Judge did refer herself to the guidance to be found in Dauhoo she made reference to no other jurisprudence. The key sentence in paragraphs 20 and 24 of the decision either both contain typographical errors, or, they indicate that the Judge wrongly considered that a successful applicant needed to establish both that he was a member of the sponsor's household and dependent upon him, when in fact one or the other is sufficient. Moreover there is no obligation upon an applicant to establish that the household relied upon was located in the EEA; Bigia [2009] EWCA Civ 79.
27. Accepting those errors Mr Kingham argued that there was in this case no material error of law requiring the decision to be set aside and remade. He argued that it was plain when the decision was read as a whole that the Judge had not been satisfied that the Appellant had made out his claim to have been dependent upon the sponsor in the relevant period, because no positive finding had been made to that effect. In any event, if the decision were to be set aside and remade, that claim was bound to be rejected on the evidence given that the relevant standard of proof was the balance of probabilities.
28. I agree. The decision contains no clear finding of fact either way upon the simple issue of whether the Appellant was dependent upon the sponsor in the relevant period, because the Judge has throughout conflated that issue with the question of whether or not the Appellant was a member of the sponsor's household in the relevant period. Nevertheless I am satisfied that it is tolerably clear from her decision that she did not accept that proposition. In any event, it is clear to me from my review of the evidence set out above, that if I were to set aside and remake the decision I would be bound to reach the conclusion that the Appellant had not discharged the burden of proof that rested upon him in relation to that issue. In the circumstances the decision to dismiss the appeal is confirmed.

### **DECISION**

The Determination of the First Tier Tribunal which was promulgated on 29 May 2015 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside

and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

The Appellant did not seek anonymity before the First Tier Tribunal, and no request for anonymity is made to me. There appears to be no proper basis for the Upper Tribunal to make such a direction of its own motion.

Deputy Upper Tribunal Judge JM Holmes  
Dated 11 January 2016