



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/44613/2014

THE IMMIGRATION ACTS

Heard at Manchester Crown Court
On 18 March 2016

Decision and Reasons Promulgated
On 1 April 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AMAR SOHAIL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan, instructed by Parkview Solicitors
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 2 February 1989. He has been given permission to appeal against the determination of the First-tier Tribunal dismissing his appeal against the respondent's decision of 21 October 2014 to refuse to issue him with a

residence card as the extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

2. The appellant entered the United Kingdom on 16 February 2011 as a Tier 4 (General) Student Migrant and was granted leave until 22 April 2014. He made an application for an EEA residence card as the extended family member of his maternal uncle, a Portuguese national exercising treaty rights in the UK.

3. His application was refused on 21 October 2014 on the grounds that he had not provided evidence in the form of original birth certificates demonstrating that he was related as claimed to the EEA national sponsor. For the same reasons it was considered that he had no entitlement to rely on the EEA Regulations and thus no right of appeal under the Regulations.

4. The appellant nevertheless appealed against the decision and the Tribunal decided that the appeal could proceed.

5. At a hearing on 28 April 2015, First-tier Tribunal Judge Simpson had before her documentary evidence including birth certificates and heard from the appellant and his uncle, the EEA sponsor. She recorded the following claimed facts: that the sponsor was the appellant's mother's brother; that the appellant had lived with his parents and siblings in Faisalabad before coming to the UK and that the family was relatively poor; that the appellant's uncle had always supported the family financially; that the sponsor had lived in Pakistan until 2000 when he migrated to Portugal and continued to financially assist the appellant's family; that the sponsor financially supported the appellant's studies in Pakistan; that the appellant came to the UK in February 2011 to study and that his uncle, who was still living in Portugal, continued to support him financially; that the sponsor became a Portuguese national in January 2014; and that the sponsor came to the UK in February 2014 and the appellant lived with him from the summer of 2014.

6. Judge Simpson was not satisfied that the appellant was dependent, financially or otherwise, on his uncle prior to coming to the UK in February 2011 and gave reasons for so concluding. Furthermore, she was not satisfied that the appellant's circumstances fell within Regulation 8 of the EEA Regulations as he was not accompanying his uncle when he came to the UK in February 2011 and he was not joining him here. She considered that between February 2011 and January 2014 any dependency there may have been did not meet the requirements of Regulation 8. Whilst the judge accepted that the appellant and his uncle were related as claimed, that the appellant was presently dependent upon his uncle and was a member of his household, and that the sponsor was an EEA national exercising treaty rights in the UK, she did not accept that the appellant was dependent on his uncle prior to coming to the UK or that he was joining his uncle in the UK. Accordingly she was not satisfied that the appellant met the requirements of regulation 8(2) and she dismissed the appeal.

7. Permission to appeal that decision was sought by the appellant on the grounds that the question of financial dependency had not been a live issue in the appeal as it had not been

a reason given by the respondent for refusing the application, and that accordingly the appellant ought not to have been penalised for providing only limited documentary evidence in that regard; and further that the judge had failed to give adequate reasons for rejecting the oral evidence of the witnesses as to the financial dependence. The grounds asserted further that the judge had misdirected herself in relation to Regulations 7 and 8 of the EEA Regulations in requiring that the EEA national had to travel with the appellant to the UK or already be in the UK; and that the judge had failed to engage with the appellant's Article 8 claim.

8. Permission was granted on 8 January 2016 on the ground relating to Article 8, although not excluding the other grounds.

9. The respondent's rule 24 response relied on the case of Amirteymour & Ors (EEA appeals; human rights) [2015] UKUT 466 in regard to the ground relating to Article 8 and on the case of Moneke and others (EEA - OFMs) Nigeria [2011] UKUT 341 in regard to the sponsor's status prior to coming to the UK.

10. Ms Khan pursued the grounds of appeal before me, submitting that there had been procedural unfairness in the judge finding against the appellant on grounds of financial dependency when that had not been a matter relied upon by the respondent in refusing the appellant's application. I asked Ms Khan how that was material in light of the decisions in Amirteymour and Moneke. Ms Khan accepted that those cases properly set out the law but she said that it was not for her to say how the appellant could succeed despite the decisions in those cases. She was instructed to pursue the appeal on the basis of the evidence demonstrating financial dependence.

11. Ms Johnstone submitted that the judge was required to consider whether the appellant could meet the requirements of the EEA Regulations, whether or not the refusal letter raised the issue of financial dependence, and he clearly could not.

Consideration and findings

12. I advised the parties that I found no error of law in the judge's decision and I give my reasons accordingly.

13. Whether or not the issue of financial dependency had been raised in the respondent's refusal, the judge was nevertheless required to consider whether the appellant could meet the requirements of the EEA Regulations. There had been no concessions made by the respondent in refusing the application and clearly the judge had to consider all relevant matters.

14. The respondent properly relies on [40(ii)] of the decision in Moneke which states as follows:

"In either case the dependency or membership of the household must be on a person who is an EEA national at the material time. Thus dependency or membership of a household that preceded the sponsor becoming an EEA national would not be sufficient. It is

necessary for the pre entry dependency to be on the EEA national and not a person who subsequently became an EEA national. Thus if a sponsor has been financially supporting OFMs who live abroad for many years before he became an EEA national, but there was no such support after the sponsor acquired EEA nationality, there would be no evidence of dependency on an EEA national.”

15. The evidence before the judge was that the appellant came to the UK in February 2011. His uncle, the named EEA sponsor, became an EEA national in January 2014. In accordance with the decision in Moneke, the appellant could only rely upon dependency on his uncle, for the purposes of meeting the definition of extended family member under the EEA Regulations, from the time his uncle became an EEA national, namely in January 2014. Accordingly, as the judge observed at [18], between February 2011 and January 2014 any dependency by the appellant on his uncle would not meet the requirements of Regulation 8. Therefore the appellant was unable to demonstrate any dependency upon an EEA national prior to coming to the UK and could not meet the criteria in Regulation 8 to establish that he was the extended family member of an EEA national.

16. Clearly the appellant could not succeed in his application under the EEA Regulations and whether or not he had further evidence of financial dependence that he could have submitted is immaterial. The judge properly dismissed the appeal on the grounds relating to the EEA Regulations.

17. Likewise the appellant could not succeed on his grounds of appeal under Article 8 and indeed permission ought not to have been granted on that basis, in light of the principles set out in Amirteymour. The appellant had not made a human rights claim and there was no section 120 notice. Accordingly he was not able to bring a challenge to the respondent’s decision on such grounds before the judge who properly found that to be the case.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Upper Tribunal Judge Kebede

Dated: