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

Appeal Number: IA/46717/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 19 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**A S
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Aitken, counsel.

For the respondent: Mr Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Mauritius who applied in August 2014 for a residence card as confirmation of a right of residence in the UK under the *Immigration (EEA) Regulations 2006* ("the Regulations"). The application was refused in October 2014. The appellant appealed to the First-tier Tribunal and his appeal was dismissed by First-tier Tribunal Judge Obhi ("the FTTJ") in a decision promulgated on 16 June 2015.

2. Given my references to the appellant's personal circumstances and those of his brother and sister-in-law, an anonymity direction is appropriate.
3. The appellant sought permission to appeal. This was granted by First-tier Tribunal Judge M L Dineen on 9 October 2015 in the following terms:
 - "1. ...
 2. The notice of appeal complains in ground 1 that the judge made a perverse finding that the appellant had attempted to abuse the provisions of the regulations, because that finding was based on the fact that the appellant had gone to painstaking lengths to demonstrate dependency on an EEA National.
 3. I find that this constitutes an arguable error of law, on the basis that taking pains to prove a case is unlikely to damage the credibility of a party.
 4. The findings of fact generally may be contaminated as a result, so that the remaining grounds are arguable."
4. Thus the appeal came before me.
5. Mr Aitken, for the appellant, relied on the appellant's grounds of appeal which I summarise as follows:
 - (i) The finding of an abuse of the EEA Regulations is perverse/irrational, made as it is on the basis that the appellant and his family had gone to great lengths to show the appellant was financially dependent on the EEA national, his sister-in-law. This is particularly the case because the respondent had challenged the lack of evidence to support the application. The appellant was entitled to address that challenge.
 - (ii) The FTTJ had materially erred in law in finding that the dependency began in December 2013, when the evidence was that it had begun the previous month. Thus a negative credibility finding had been based on a mistake of fact.
 - (iii) The FTTJ had misdirected herself on the nature of the dependency required. There was no need to determine the reason for the financial support provided by the EEA national (**Moneke (EEA - OFMs) Nigeria [2011] UKUT 00341 (IAC)**). The case law allowed for dependency of choice.
 - (iv) The FTTJ erred in her assessment of the evidence regarding dependency. Her findings were perverse and unsustainable given the documentary evidence. There was no requirement for complete dependency.
 - (v) The appellant had discharged the burden of proof, notwithstanding he had entered the UK as a visitor (**Ihemedu (OFMS - meaning) Nigeria [2011] UKUT 340 (IAC)**).
 - (vi) The finding that the EEA national's income was insufficient to provide financial support to the appellant was not sustainable given that the EEA national's husband, the appellant's brother, also contributed to the family income.
 - (vii) The FTTJ had given weight to immaterial matters.

(viii) There were factual errors within the decision.

6. Mr Walker, for the secretary of state, conceded that the decision contained material errors of law in that the FTTJ's findings were based on irrelevant evidence and, furthermore, irrelevant issues had been taken into account.
7. I agree with the parties' representatives that the decision contains errors of law: the FTTJ erred (paragraph 31) in finding that the appellant's having "gone to painstaking lengths to try and demonstrate that the appellant is dependent on [his sister-in-law] has all the hallmarks ... of an attempt to abuse the provisions in the EEA Regulations". Plainly the appellant was entitled to seek to address the respondent's challenges in the reasons for refusal. To make a finding against the appellant on such a ground is wholly unfair and unreasonable and constitutes an error in law. Furthermore, I agree with the parties that there was no requirement on the FTTJ to determine the reason for the provision of financial support (**Moneke**). It is an error of law to make an adverse finding on the ground that the appellant had provided "no evidence of [his] adult history of work and loss of employment, of his parents; business employing him and then failing..." (**Moneke**).
8. Having indicated to the parties' representatives that I would make a finding of material errors of law, they agreed that the appropriate approach was for the findings of fact (insofar as they were relevant to the issues in the appeal) to be preserved and that I should remake the decision. I agree with this approach and proceed on that basis.
9. The appellant provided consistent, detailed and comprehensive documentary evidence of money transfers from the appellant's sister-in-law's bank account in the UK to the appellant in Mauritius. It is the appellant's case that he had not needed financial support until November 2013 when his parents' business failed and his parents were no longer able to provide him with financial support. The evidence is consistent with that case.
10. It is of no relevance that the appellant had been making efforts to find alternative employment. The sole issue for me to decide is whether he was dependent on his sister-in-law, the EEA national, as he claims. The appellant's brother married the EEA national in December 2013 in Mauritius when they were both visiting that country. The evidence of the witnesses is that, due to the ill health of the appellant, his brother and his wife extended their stay in Mauritius to support him. I am in no doubt that the appellant has demonstrated, on the balance of probabilities that he was provided with financial support by his Polish sister-in-law from November 2013, prior to the date of her marriage to the appellant's brother. That support continued after the marriage and whilst the appellant's brother and sister-in-law were in Mauritius. The appellant's evidence is that he was living with his parents but that they could not afford to maintain him because they were committed to funding his sister's, their daughter's, university studies. Whilst the appellant was given accommodation by his parents, I accept that his sister-in-law

provided funds for his essential needs; this is consistent with his having exhausted his savings following his redundancy, the failure of the family business and because also his parents were funding his sister's education.

11. The evidence of the appellant, his brother and his Polish sister-in-law is wholly consistent both as between the witnesses and with the documentary evidence which has been provided in support of the appeal. It is to the credit of the appellant that he has provided comprehensive documentary evidence to address the principal issue raised by the respondent in her reasons for refusal, namely his dependency on his sister-in-law.
12. I am wholly satisfied, given that evidence, that the appellant was dependent on the EEA national, his sister-in-law, prior to coming to the UK, albeit that period of dependency was relatively short, being from December 2013 (the date of the appellant's brother's marriage to the EEA national) to May 2014 when he entered the UK as a visitor. That dependency has continued: he has lived with his brother and sister-in-law in the UK since his arrival here and continues to be maintained by the EEA national.
13. For these reasons I find that the decision of the respondent was not in accordance with the law.

Decision

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
15. I set aside the decision.
16. I remake the decision in the appeal by allowing it to the limited extent that the respondent's decision is not in accordance with the law.

Signed **A M Black**

Date: 18 January 2016

Deputy Upper Tribunal Judge A M Black

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed **A M Black**

Date: 18 January 2016

Deputy Upper Tribunal Judge A M Black