



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00001/2016
EA/00002/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 18 August 2017

Decision & Reasons promulgated
On 29 September 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SHINDER SINGH
JASPAL KAUR
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali instructed by H S Lawyers Ltd.

For the Respondent: Mr S Kotas Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Andrew promulgated on 28 October 2016 in which the Judge dismissed the appellants' appeals against the respondent's refusal to issue them with Residence Cards as confirmation of their right to reside in the United Kingdom as direct family members of an EEA national exercising treaty rights in the UK.

Background

2. The appellants, a husband and wife, are citizens of India the first appellant having been born on 24 February 1950 and the second appellant on 3 June 1956.
3. It is not disputed that the appellant's son, an Italian citizen, is exercising treaty rights in the UK.
4. The Judge also records at [3] that it was common ground that the only issue in the appeal was whether the appellants were dependent on their Italian citizen son. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out her findings of fact from [4] of the decision under challenge. Those findings may be summarised in the following terms:
 - a. The assertion made by the appellants and sponsor that they lived in Italy as they were dependent upon the Italian national sponsor and had been issued residence cards or permits is noted although the Judge found she was unable to place any weight upon the documentary evidence provided to confirm this assertion which had not been translated [8].
 - b. The Judge only had assertions to the effect the sponsor gave the appellants money for their support after they returned to live in India in 2012 [9].
 - c. The appellants travelled to the United Kingdom in 2013. In their first visa application, the first appellant did not state the purpose of the visit was to visit the sponsor, but his nephew and that he intended to stay for a period of two weeks although stayed for four months. The Judge also noted that despite referring to his son, the sponsor, at question 54 the first appellant did not say he was now exercising treaty rights in the UK. Dates are given for travel to Italy but there is no mention of the first appellant actually living in that country [10].
 - d. The Visa application form showed that even though the first appellant is retired he has substantial wealth and income [13].
 - e. A second Visa application form indicated the first appellant intended to stay in the United Kingdom for six weeks to see his son and daughter-in-law. The Judge noted the first appellant confirmed he had savings, property, and other income from stocks and shares and that his son, the sponsor, is to pay for the cost of his trip to the United Kingdom [14].
 - f. The Judge concludes there was nothing in the second Visa application form either to show that the claims made by the appellants and the sponsor that they have been dependent on the sponsor are credible and that his merely paying the costs of the trip does not mean the appellants are dependent on their son [15].
 - g. The Judge notes that despite saying they only wish to stay in the United Kingdom for a period of six weeks on 29 June 2015 about five months

after the date of their visit Visa the appellants applied to remain in the United Kingdom as dependents of their son, the sponsor [16].

- h. The Judge accepted evidence had been provided of receipts from Western Union sent by the sponsor to the appellant in India in 2014 but the purpose of the money and for what it was sent was not known. Merely sending money to India does not show the appellants are dependent on their son [17].
- i. The Judge accepts the appellants are presently living with their son in the United Kingdom although other than the assertions made the Judge found there was nothing to show they are dependent upon him for their income. It is said there was nothing to show payments made to the appellants in the sponsor's bank statement shows the payments are for rent or the basic necessities of living such as fuel bills "and the like" [18].
- j. At [20] the Judge writes:

"In this case the Appellants misrepresented their intentions on entry to the United Kingdom. Their evidence was not credible, given the information contained in the VAF's that contradicts the evidence I was asked to believe. There was no documentary evidence to confirm the assertions that were being made by the Appellants and the Sponsor. Although the Sponsor may have a house in India built on the First Appellants land it seems that he has lived in this for such short periods of time that it cannot be considered to be his household. In any event there is no evidence before me that the house is recognised as being that of the Sponsor again other than the assertions made by Appellants and the Sponsor. There was nothing before me to show the claimed amount of material support needed by the Appellants to meet their essential living needs or that any of this was supplied by the Sponsor."

- k. The Judge was not satisfied on the evidence before her that the appellants are now, or have in the past, been dependent on the sponsor.

- 5. The appellants sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal on 8 June 2017, the operative part of the grant being in the following terms:

"Arguably the judge erred by considering the appellant's application as extended family members rather than family members and therefore arguably failed to focus on the question of dependency in the UK. Given the judge's findings at [18] it may well be that any arguable error is in any event immaterial. Nevertheless the matter requires further discussion and consideration. Accordingly permission is granted and all grounds may be argued."

Error of law

- 6. On behalf of the appellants Mr Ali argued that the Judge focused on the requirements of Regulation 8 rather than Regulation 7 in relation to which there is a clear distinction, as with Regulation 8 there is the need to satisfy both prior and current dependency which is stated not to be the case under Regulation 7. It

is argued the Judge should have properly focused on whether the financial support provided by the EEA national to the appellants was for the purpose of meeting their “essential needs” at the date of the hearing considering the evidence and appellants individual/collective circumstances.

7. Mr Ali also argues there was no evidence before the Judge regarding the appellant’s circumstances and it was clear the appellants did not have any financial means to support themselves such as to be able to meet their “essential needs”. It was therefore clear that the appellant’s needs would be met by their son with whom they were living since their arrival in the United Kingdom. It is argued the evidence was consistent and that the appellants had no source of income of their own and that the appellants had lived with their son as family members in Italy between 2007 to 2012. Mr Ali submits that although documents were not translated they have been provided to the respondent who did not raise any challenge in relation to them and that the Indian passports provided by the appellants proved they had lived in Italy as claimed. It was submitted the unmistakable evidence of financial remittances from the EEA national were rejected based on conjecture, speculation, and assumptions, whereas this clearly showed that money was sent to the appellants to meet their essential needs. It is submitted on the appellant’s behalf that witness statements confirm the money submitted to the appellants was to meet their essential needs. It is also submitted the Judge accepted the appellant’s son is in the United Kingdom exercising treaty rights and that the bank statements were provided by the Appellant son. Even if there was no evidence of why the money was paid from the bank account, the son paid all the housing costs which was not disputed. It was submitted that if the case is considered in the correct context the facts prove dependency and that the appellant should therefore succeed.
8. The argument as to whether regulation 7 or regulation 8 was applied is arguably academic as the Judge at [5] noted that it was common ground that the only issue was whether the appellants were dependent on their Italian son. This was the only matter upon which the Judge was required to make a finding. The criticism of the Judge for referring to the case of Moneke at [19] is arguably unwarranted as this is a reference by the Judge to guidance provided by the Upper Tribunal in relation to how evidence adduced for the purposes of discharging the burden of proof to demonstrate eligibility should be assessed. It has not been made out that in setting out findings relevant to the key issue the Judge made any mention of prior dependency or any findings in relation to the same pertinent to the assessment of the Regulation 7 issue. The Judge refers to evidence of assets including ownership of the property but no more.
9. A reading of the evidence and the decision shows there were two concerns in the mind of the Judge being (A) lack of evidence and (B) credibility.
10. The issue regarding the provision of translated documents is not raised in the renewed grounds these again may only be relevant to the background as what

may have happened, initially prior to 2012, does not establish the required element of dependency at the date of the hearing.

11. The Judge noted that the appellants receives money from other sources including the son in the United Kingdom and notes that it is given by the appellants to family members. The core finding at [18] is that the appellants had not discharged the burden upon them to required standard to show that the core issue had been satisfied. The money transfers referred to by the Judge, a couple dated 2014 and another 2003, make it arguably open to the Judge to express concern about the quality of the evidence adduced to prove the required element of dependency and to find the appellant had not discharged the burden of proof upon him to the required standard. The fact the appellants were living at their son's house, having entered the UK as visitors under domestic legislation was noted by the Judge, but this was not determinative of the issue. Statements were all taken into account with the required degree of anxious scrutiny and adequate reasons given for the findings made. The assertion the Judge gave inappropriate weight by reference to speculation has no arguable merit as it was for the Judge to decide what weight should be given to the evidence. Mere disagreement with the outcome or a belief that greater weight should have been attached to certain aspects of the evidence does not arguably establish legal error material to the decision to dismiss the appeal.
12. In *ECO Manilla v Lim* [2015] EWCA Civ 1383 the appellant sought entry, as the family member of an EU national. The appellant had savings and a retirement fund in excess of £55,000 and she owned her own home in Malaysia valued at £80,000. The appellant's daughter, married to the EU national, sent her £450 per quarter which she used to meet her expenses without spending any capital. Applying *Reyes v Migrationsverket* (Case C- 423/12) it was held that it was not enough to show that the financial support was in fact provided by the EU citizen to a family member; the family member must need that support in order to meet her basic needs; there needed to exist a situation of real dependence; receipt of support was a necessary condition of dependency, but not a sufficient condition; and it was necessary to determine that the family member was dependent in the sense of being in need of assistance even though it was irrelevant why she was dependent. If, as here, the family member could support herself, there was no dependency even though she was given financial support from the EU citizen.
13. It is an arguably sustainable finding that the test of whether an applicant requires the 'material' support of the EU citizen in order to meet his 'essential' needs had not been shown to be met for the reasons given by the Judge.

Decision

14. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 28 September 2017