



IAC-AH-SC-V1

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

Appeal Number: EA/02235/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 9 August 2018**

**Decision sent to parties on
On 4 September 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**MUHAMMAD ANAMUL HAQUE
(NO ANONYMITY ORDER)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M Bhuiyan instructed by Universal Solicitors
For the Respondent: Mr T Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The applicant has permission to challenge the decision of the First-tier Tribunal on 27 February 2018 dismissing his appeal against the decision of the Entry Clearance Officer to refuse him entry clearance to join the sponsor, his uncle, a Belgian citizen who is in the United Kingdom as an EEA national exercising Treaty rights here. The question for the Upper Tribunal is whether the First-tier Judge erred in law in finding that the appellant is not a dependant of necessity on the sponsor, and/or that he is not a member of the sponsor's household in Bangladesh.

2. The appellant is a 32-year old man who has lived in the same house where the sponsor grew up, since the death of his father when he was 1 year old. The household also contained the sponsor's parents, but it is argued that because the sponsor has been sending money from the United Kingdom to support them, or for some other reason which is not clearly explained, that household should be treated as that of the sponsor, not his parents.
3. The appellant has helped to care for the sponsor's mother since the sponsor left for the United Kingdom. It seems to have been a demanding role. There is no evidence as to whether he is capable of working, but he has not done so, depending instead on the money the sponsor sends from the United Kingdom, as does the sponsor's mother, and the appellant's own widowed mother. The sponsor's mother succeeded on appeal before the First-tier Tribunal and is not an appellant before the Upper Tribunal. and is not an appellant in the present appeal.
4. I adjourned this appeal hearing previously for the submission of more extensive grounds of appeal since the grounds of appeal were unhelpfully brief. I am grateful for the clarification which the expanded grounds provide.

Rule 15(2A): introduction of additional documents

5. The amended grounds were accompanied by a number of documents for which no Rule 15(2A) permission had been given or sought. Mr Bhuiyan accepts that these are documents which were not before the First-tier Tribunal, and could not therefore have given rise to any arguable error of fact or law in the decision of the First-tier Tribunal.
6. There is one document at page 33 of the new bundle which was in the original bundle, but untranslated. It is now provided with a translation but the First-tier Judge did not have that translation and it is at best evidence that the sponsor paid an electricity bill for his mother. That evidence, even if admitted, could not of itself establish that the household in which the sponsor and this appellant grew up was the household of the sponsor rather than the household of the sponsor's parents, which would be the normal position. I do not admit the additional documents, they are not relevant to the question whether there is a material error of law in the decision of the First-tier Tribunal.

The factual matrix

7. The present appellant is a man now 32 years old who has lived as a member of the sponsor's extended family in Bangladesh since he was 1 year old, when his father died and his mother became a widow. After his father's death, the appellant remained in his uncle's family home, headed by his great-aunt and great-uncle: the sponsor lived there for some of the time, but the respondent contends that the household was that of the sponsor's parents.
8. By family arrangement the sponsor maintained his mother (the appellant's great-aunt) by sending her money from the United Kingdom. The present appellant gave

his great-aunt the personal care that she required, instead of going out to work. There was no evidence before the First-tier Tribunal to suggest that this young man, who is now over 30 years old, was unable to work but it was convenient to the family for him to provide the personal care which the sponsor's mother needed.

The law

9. Permission was granted on the basis that dependency on the sponsor at the date of decision was all that had to be proved and that on that basis the appeal arguably ought to have been allowed. That is erroneous: the question is whether such dependency is dependency of necessity, or of choice.
10. I am guided on the question of dependency by the decision in *Lim v Entry Clearance Officer Manilla* [2015] EWCA Civ 1383, at [32] in the judgment of Lord Justice Elias, with whom Lord Justices McCombe and Ryder agreed:

“32. In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and *Reyes* now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, *even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs.* If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.”

[Emphasis added]

Discussion

11. For the appellant, Mr Bhuiyan has sought to persuade me that *Lim* should be distinguished on the facts, because Mrs Lim was a wealthy woman and capable of supporting herself financially from her own resources whereas this young man had no experience at all of working.
12. However, it is a well-established principle that he who asserts must prove and there is simply no evidence at all to suggest that this medically healthy, fit young man would not be able to support himself if he were not looking after his great-aunt, by means of a family arrangement to that effect. It sounds as though looking after the sponsor's mother was a fairly demanding job and there is no evidence (other than the sponsor's assertion and that of the appellant) to show whether or not, if he had not been doing that, this young man could have supported himself.
13. I am satisfied that on these facts, the First-tier Judge did not err in law in concluding that at all material times that household was the household either of the sponsor's parents or, after his father's death, of the sponsor's mother. The sponsor is a fit young man and applying *Lim* there is no doubt in my mind that his dependency on the sponsor is a dependency of choice.

Decision

14. The First-tier Tribunal did not make a material error of law in the decision on this appeal. I do not set aside the decision of the First-tier Tribunal. The decision of the First-tier Tribunal stands.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 28 August 2018