



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/08964/2016
EA/08968/2016
EA/08969/2016
EA/04113/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 9th March 2018

Decision and Reasons Promulgated
On 14th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**TEENANT RUBAB
ALI RAZA
MUHAMMAD TAQI**
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timpson (Counsel, instructed by Whitefield Solicitors)
For the Respondent: Mr C Bates (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants, who are all over 21, are siblings and are nationals of Pakistan, they are the adult children of the Sponsor, their father who is an Italian national. They had applied under the EEA Regulations 2006 as the adult dependent relatives of an EEA national in the UK exercising treaty rights. The applications were refused for the reasons given in the Refusal Letters of the 12th of July 2016.
2. The Appellants appealed to the First-tier Tribunal. The appeals were heard by First-tier Tribunal Judge Thorne at Manchester on the 19th of June 2017 and dismissed in a decision promulgated on the 17th of July 2017. The Appellants sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Easterman on the 22nd of December 2017 leading to the hearing on the 9th of March 2018.

3. The findings of Judge Thorne start at paragraph 32 of the decision. He found that the Sponsor is an EEA citizen in the UK exercising treaty rights. The Judge went on to find that there were a number of serious inconsistencies in the evidence which undermined the claim to be dependent on the Sponsor. The Judge found that they had been inconsistent with regard to the time they lived in Italy without the Sponsor and very limited evidence of financial dependency, there being evidence of only 2 Moneygrams. There was no evidence that the Appellant's were not capable of work or that they had problems that as adults would make them dependent on the Sponsor.
4. With regard to the UK it was accepted that they live together with the Sponsor but again the evidence was inconsistent with regard to how they were dependent on the Sponsor. The suggestion that the Second and Third Appellants were dependent on the Sponsor was rejected. Of the First Appellant the Judge said "In relation to A1, it may be that she does not work, but it is clear to me that she chooses not to." The Judge went on to find that the Sponsor's earnings were such that it was highly unlikely that he was able to support all of his children and his wife.
5. The grounds of application argue that the Judge erred in the approach taken to the dependency of the Appellants on the Sponsor and applied the wrong test that being of factual dependency. The reasons for dependency being irrelevant. The findings in relation to the earnings of the Sponsor were also flawed as the Sponsor had additional income in the form of tax credits and that was not an issue that had been raised in the Refusal Letter. It is also argued that the consequences of the decision would be disproportionate requiring the Appellants to return to Italy or Pakistan.
6. At the hearing the representatives made submissions in line with their respective positions. These are set out in the Record of Proceedings and are referred to where relevant below.
7. The Judge was clearly unimpressed with the evidence of the Appellants with regard to their personal circumstances both in Italy and the UK. The Judge rejected the evidence in relation to the Second and Third Appellants' circumstances in the UK. The findings in respect of the First Appellant are ambiguous in paragraph 35 finding that "it may be that she does not work, but it is clear to me that she chooses not to." I read that as a finding that if the First Appellant does not work it is by choice. However it is not an unequivocal finding that the First Appellant does not work and it appears that that was a matter on which the Judge was not satisfied that the burden of proof had been discharged.
8. That is not a material point given the findings in paragraph 35 where the judge found that the evidence did not show that the Sponsor was financially able to support all of his children and his wife. The evidence of the Sponsor's earnings is set out in paragraph 29 where it appears that the Sponsor earned up to £1,400 a month with tax credits and child benefit for his 2 youngest children.
9. The full figures are not given but it is clear that the funds coming into the household from the Sponsor are limited out of which it is claimed that he is supporting 5 adults and 2 children. With rent of £575 a month and council tax of £80 a month it is clear that the resources available are very limited.
10. As the evidence was led before the Judge and he referred to it the evidence was directly relevant to the issue of dependency which was the issue to be decided. The findings made in paragraph

36 were in the context of the rejection of much of the other supporting evidence that had been considered by the Judge. Taking the evidence overall, and given the central importance of the ability of the Sponsor to provide support this was an issue that the Judge was entitled to consider in the context of the balance of probabilities.

11. The complaint about the consequences of the decision is irrelevant. There was no section 120 Notice and article 8 issues do not arise in EEA appeals. If the Appellants wish to have their circumstances considered on a different basis then they would have to make a separate paid application under the Immigration Rules.
12. The decision has to be read as a whole. On a fair reading of the decision whilst some of the phrases employed might have been more tightly drawn it is clear that the Judge rejected the Appellants' case that they were dependent on the Sponsor. The judge also rejected the claim that the Sponsor was in a position to support the Appellants. Those findings were open to the Judge on the evidence that was presented and considered by him. The grounds work on the basis of a narrow textual analysis which is an approach deprecated by the by the Court of Appeal and do not disclose that the Judge erred. The decision of Judge Thorne stands as the disposal of this appeal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 12th March 2018