



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09565/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7th June 2018

Decision & Reasons Promulgated
On 22nd June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS KUNTALA PANDEY
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr N Adojutelegan, Solicitor Advocate instructed by
Legend Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India who made an application for admission to the United Kingdom and the application was considered under Regulation 7 of the EEA Regulations 2006. The application was refused by the Secretary of State and the Appellant's subsequent appeal to First-tier Tribunal Judge M A Khan dismissed in a decision promulgated on 24th August 2017.
2. Grounds of application were lodged it being said that the judge had erred in his reasoning conform to what was said in **Moneke and Others (EEA - OFMs) Nigeria [2011] UKUT 00341** where the Upper Tribunal held that financial dependency should be interpreted as meaning the person needs financial support from the EEA national or his/her spouse/civil partner in order to meet his essential needs.

3. The judge had placed undue weight and consideration to the few irregular and insignificant transfers made to the Appellant's bank account by her aunt from the US and failed to give adequate cognisance to the regular and substantial transfers made by the Appellant's son to her bank account that supported her case. Other grounds are set out.
4. While First-tier Tribunal Judge Foudy found that the grounds disclosed no arguable error in law permission to appeal was granted by the Upper Tribunal – Judge Perkins decided in a decision dated 23rd April 2018 that permission should be given on each ground.
5. Before me the Home Office accepted that there was a material error in law in paragraph 24 of the judge's decision. There was evidence of money transfers. The judge's decision did not deal with that. For the Appellant I was asked to remit the appeal to the First-tier Tribunal for a fresh hearing. Parties agreed that this was the way forward.
6. There is no doubt that the key findings in paragraph 24 of the decision are flawed. Dependency in EU law is a factual question only and it seems from the findings that the judge may not have appreciated that. No mention is made of cases such as **Lim** (EEA – dependency) [2013] UKUT 00437 (IAT) and **Reyes** (EEA Regs: dependency) [2013] UKUT 314 (IAC). Given that the parties agreed the judge was in error in his reasoning in paragraph 24 no more need be said at this point. The judge made a material error in law which cannot be rectified by the Upper Tribunal as a fresh hearing with evidence will have to be held. As such and given that further fact-finding is clearly necessary the matter will have to be heard again by the First-tier Tribunal.
7. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

No anonymity order is made.

Signed *JG Macdonald*

Date 21st June 2018

Deputy Upper Tribunal Judge J G Macdonald