



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000081
EA/05457/2020**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 03 June 2024**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MR MUHAMMAD NAJAM MAHMOOD CHAUDHRY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Adophy, Counsel, instructed on a Direct Access basis
For the Respondent: Miss A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 15 July 2022

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Groom (“the judge”), promulgated on 29 June 2021. By that decision the judge dismissed the Appellant’s appeal against the Respondent’s decision of 6 October 2020 to refuse his application for an EEA family permit pursuant to regulation 9 of the Immigration (European Economic Area) Regulations 2016 (“the Regulations”).
2. The Appellant is a citizen of Pakistan, born in 1979. He claimed to be the brother of the Sponsor, an EEA national. It was said that they resided together in Ireland for a period of time during which the Sponsor worked. They both then returned to the United Kingdom and the Appellant claimed

to have been dependent on the Sponsor ever since. The Respondent did not accept that the Appellant and Sponsor were related as claimed, nor did she accept that the Sponsor had in fact received an income whilst in Ireland or indeed that the residence of the Appellant and Sponsor in that country had been genuine. Finally, it was not accepted that the Appellant was dependent on the Sponsor whilst in the United Kingdom.

The decision of the First-tier Tribunal

3. In a short decision the judge essentially found that:
 - (a) the Appellant had failed to demonstrate that he was related to the Sponsor as claimed: [8];
 - (b) the Sponsor's residence in Ireland had not been genuine: [9];
 - (c) that documentation relating to the Sponsor's tax affairs in Ireland was not "legitimate": [10];
 - (d) that the claimed earnings of the Sponsor when he returned to the United Kingdom in 2019 were implausible: [11].

The grounds of appeal and grant of permission

4. The grounds of appeal raised the following arguments. First, it was said that the judge failed to have regard to a NADRA family registration certificate which was relevant to the issue of the claimed relationship. Second, the judge erred in his approach to regulation 8 of the Regulations. Third, that the judge failed to have regard to the guidance set out in ZA (Reg. 9 EEA Regs; abuse of rights) Afghanistan [2019] UKUT 281 (IAC).
5. In granting permission to appeal, Upper Tribunal Judge Blundell made the following points. It was arguable that the judge had failed to consider the NADRA certificate. The judge had arguably failed to consider ZA and had arguably confused regulations 8 and 9 of the Regulations: two were distinct. At paragraph 6, Judge Blundell went on to state:

"In the circumstances, it is arguable that the judge erred in law and permission is granted. I make no direction limiting the scope of any arguments which might be pursued, although those representing the Appellant will obviously take note of what I have said" [with reference to other paragraphs in his decision].

The hearing

6. I heard oral submissions from both representatives which are a matter of record. Mr Adophy emphasised the judge's finding that the Irish tax documentation was not "legitimate". He relied on the grounds of appeal. He sought to introduce an argument not contained in those grounds, namely that the judge had failed to place the burden of proof on the Respondent. Mr Adophy argued that Judge Blundell's grant of permission

left the door open for him to pursue additional grounds without seemingly requiring any amendment thereof.

7. Miss Ahmed accepted that the judge had failed to look at the NADRA certificate but had made sustainable findings in respect of the birth certificate. It was open to the judge to find that the claimed earnings by the Sponsor in Ireland were not genuine. As to the burden of proof issue it was not in the grounds, Judge Blundell had not permitted any other grounds to be argued and in any event a sensible reading of the judge's decision showed that he had not erred.
8. At the end of the hearing I reserved my decision.

Conclusions

9. My provisional view had been that the judge's decision, whilst containing certain shortcomings (relating in particular to the claim relationship), was not vitiated by errors of law such that it should be set aside. However, on reflection I have concluded that there are indeed material errors.
10. The judge clearly failed to have regard to or provide any reasons in respect of the NADRA family registration certificate. That was relevant evidence. I agree with Miss Ahmed to the extent that the judge's findings on the birth certificate are sustainable if seen in isolation. However, the evidence needed to be looked at in the round and the NADRA certificate required engagement. There is an error here. It would only be material if other aspects of the Appellant's challenge are made out.
11. For unexplained reasons, the judge made no reference to ZA despite it having been published in 2019 and providing guidance on the very issue with which the judge was concerned, namely the genuineness of the residence by the Sponsor and Appellant in Ireland. An aspect of the guidance relates to the work undertaken by an EEA national in the host state, in this case Ireland. Such work must have been "genuine and effective" and not simply "marginal or ancillary". At [9] of the judge's decision he refers to what he describes as "very low amount of earnings", namely €4,238 over a ten-month period. What the judge did not do, however, was to go on and consider whether those earnings were in fact "marginal or ancillary". Instead, he appears to have analysed the issue of the nature of the earnings in the context of financial support for the Sponsor and the Appellant during that timeframe. The difficulty with that approach is that it erroneously conflated the requirements of regulation 9 and regulation 8: the two provisions are distinct. As alluded to in Judge Blundell's grant of permission, the latter was irrelevant, and the focus should only have been on the former. Whilst the earnings were indeed low, the judge failed to place his view of the evidence into the appropriate legal context, namely whether they were only "marginal or ancillary". I cannot say that the judge's erroneous approach could have made no difference to the overall outcome. Thus, the error of law is material.

12. In respect of [10] of the decision, I cannot quite understand the nature of the judge's conclusion that the Irish tax documentation was not "legitimate". He does not appear to be saying that the earnings had simply not existed at all and it is unclear whether he was instead suggesting that the Sponsor had attempted to deceive the Irish tax authorities. Whatever the intention was, this conclusion does not render the other errors in the decision immaterial.
13. [11] and [12] related to the situation in the United Kingdom and the claimed financial dependency of the Appellant on the Sponsor. That issue went to regulation 8, not regulation 9 and is therefore beside the point.
14. As regards the burden of proof issue, Upper Tribunal Judge Blundell was clearly not permitting the Appellant to raise *any* arguments relating to regulation 9 *whether or not set out in the grounds of appeal*: he was doing nothing more than confirming that the grant of leave encompassed all of the pleaded grounds. Thus it was not open to Mr Adophy to raise a new ground at this stage. However, this makes no difference to my ultimate conclusion, which is that the judge's errors are, when taken together, material. It follows that the judge's decision must be set aside.
15. This appeal must be looked at afresh, with no findings of fact preserved. There will need to be fact-finding in respect of the claimed relationship, together with the nature of the residence in Ireland. In all the circumstances, 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 of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- 1) This appeal is remitted to the First-tier Tribunal for a complete re-hearing with no preserved findings of fact;**
- 2) The remitted hearing shall not be conducted by First-tier Tribunal Judge Groom.**

Signed H Norton-Taylor

Date: 25 July 2022

Upper Tribunal Judge Norton-Taylor

