



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

Appeal Number: IA/22363/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27th June 2014**

**Determination
Promulgated
On 2nd July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

**MR ASGHAR MAJEED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright, Counsel, instructed by Lee Valley Solicitors
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born on 15th August 1952. He is the father of Mr Muhammad Farhan Asghar who is a citizen of Pakistan born on 27th December 1984. Mr Asghar is married to Mrs Hanna Josefin

Goransson, who is a Swedish citizen born on 20th December 1984. Mr Asghar and Mrs Goransson were married on 15th March 2011 and have a son together. The appellant, Mr Asghar, Mrs Goransson and their son all live at the same address.

2. The appellant arrived in the UK on 21st May 2004. He applied for a residence card as the family member of Mr Asghar and Mrs Goransson in September 2012. This application was refused on 11th April 2013 on the basis that he had not provided the relevant birth and marriage certificates to show he was related as claimed to Mrs Goransson.
3. His appeal against the decision was dismissed by First-tier Tribunal Judge CJE Nicholls in a determination promulgated on the 2nd April 2014. The respondent conceded that the appellant was related to his son as claimed and that his son was married to Mrs Goransson, and that this placed him with the definition at Regulation 7(1)(c) of the Immigration (EEA) Regulations 2006. Judge Nicholls dismissed the appeal because he found that the appellant was, on the facts of the case, dependent on Mr Asghar but not on his EEA daughter-in-law, Mrs Goransson.
4. Permission to appeal was granted by Judge of the First-tier Tribunal Simpson on 15th May 2014 on the basis that it was arguable that the First-tier Tribunal had erred in law in finding it was necessary for there to be some dependency on the EEA national rather than on the non-EEA national son.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

6. At the start of the hearing I asked Mr Parkinson if he accepted that there was an error given the wording of Regulation 7(1)(c) of the Immigration (EEA) Regulations 2006 (as clearly the respondent had become confused with Regulation 8 (2) in the Rule 24 notice) but he said that he maintained that Judge Nicholls' approach was lawful as there must be some degree of dependency on the EEA national and in the unusual facts of this case there was none. He believed that Jia (Free movement of persons) [2007] EUECJ - C-1/05 at paragraph 40 supported this view. Whilst Judge Nicholls had found a connection between the appellant and the EEA national in that the appellant provided childcare for the EEA national's child there was not an interconnected family as was needed, see Lim (EEA - dependency) Malaysia [2013] UKUT 437, and there was no evidence that the childcare provided was important to the EEA national.
7. Mr Plowright submitted that he did not believe Jia was authority for this proposition, particularly if taken with the two cases of Reyes v Migrationsverket (Directive 2004/38/EC) Case C-423/12 and Reyes (EEA Regs: dependency) [2013] UKUT 00314. Once Judge Nicholls had found

the appellant to be a dependent of Mrs Goransson's spouse, as he does at paragraph 17 of his determination, that was the end of the matter under Regulation 7(1)(c) of the Immigration (EEA) Regulations 2006. All the other findings were irrelevant. If the EEA national moves to another EEA state, as is speculated upon at paragraph 23 of the determination, then clearly her husband Mr Asghar and son would go too, and so therefore would the appellant. Thus it was also wrong to suggest that the appellant was not part of the exercise of Treaty rights by Mrs Goransson.

Conclusions: Error of Law

8. The wording of Regulation 7(1) (c) of the Immigration (EEA) Regulations 2006 is clear. The appellant is a family member if he is the dependent relative in the ascending line of the EEA or the EEA national's spouse. At paragraph 35 of Jia it is stated as follows: "According to the case-law of the Court, the status of "dependent" family member is the result of a factual situation characterised by the fact that material support for the family member is provided by the Community national who has exercised his right of free movement or by his spouse (see, in relation to Article 10 of Regulation No 1612/68 and Article 1 of Council Directive 90/364/ EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p26), Lebon, paragraph 22 and Case C-200/02 Zhu and Chen [2004] ECR1-9925 paragraph 43, respectively)." The case then considers in detail what dependency might mean, but starts clearly from the position that this "material support" can be provided by the EEA national or the spouse. This position is also confirmed at paragraph 43 of Jia where it is stated that the: "material support of that Community national or his or her spouse in order to meet their essential needs" is required. Paragraph 35 of Jia is cited again at paragraph 17 of Reyes (EEA Regs: dependency); again at paragraph 21 of Reyes v Migrationsverket; and again at paragraph 16 of Lim (EEA- dependency) Malaysia [2013] UKUT 437.
9. I find it is clear therefore that dependency on the EEA national's spouse suffices to meet the requirements of Regulation 7(1)(c) of the Immigration (EEA) Regulations 2006. I therefore find that Judge Nicholls erred in law in requiring dependency of the appellant on Mrs Goransson when he had satisfied himself that the appellant met the definition of a dependent in relationship to Mr Ashgar at paragraphs 20 and 24 of the determination.

Conclusions: Re-making

10. Judge Nicholls found that the appellant was financially dependent on his son Mr Ashgar; and also had social and emotional ties with him; and that he cares for his grandson as both his son, Mr Ashgar, and his son's wife, Mrs Goransson, work. He found that this dependency was genuine in accordance with the case law providing guidance on this issue, namely Reyes (EEA Regs: dependency) and Jia. There was no allegation

or evidence that this was a situation characterised as an abuse of rights. Judge Nicholls was satisfied that Mr Ashgar and Mrs Goransson were married (and indeed were not estranged, lived in the same household and had a young child). He was also satisfied that Mrs Goransson was a qualified person as a Swedish national exercising Treaty rights as a worker as a branch manager for bookmakers William Hill, thereby satisfying Regulation 6 of the Immigration (EEA) Regulations 2006. The respondent had conceded that the appellant was Mr Ashgar's father and that Mr Ashgar and Mrs Goransson are lawfully married.

11. In such circumstances I find that appellant is entitled to a residence card under Regulation 17(1) of the Immigration (EEA) Regulations 2006 as he is the family member of a qualified person, under Regulations 7(1)(c) of the Immigration (EEA) Regulations 2006.

Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law.
13. The decision of the First-tier Tribunal is set aside.
14. The decision is re-made allowing the appeal.

Deputy Upper Tribunal Judge Lindsley
27th June 2014

Fee Award

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007). I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). The evidence showing dependency would appear, in large part at least, to have been submitted at the appeal stage in this case, and no submissions were made requesting a fee award on behalf of the appellant. In these circumstances I do not find it appropriate to make a fee award.

Deputy Upper Tribunal Judge Lindsley
27th June 2014