Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24776/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 November 2014	**On 2 December 2014**
Determination given 19 November 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MRS GNAI FAREENA MENDIS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S J Joseph, Counsel instructed by Chambers of Sel Job Joseph
For the Respondent: Ms S Vijayharan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth 7 June 1948, appealed against the Respondent's decision, dated 13 June 2013, to refuse an application for a residence card made on 12 May 2014.

2. The decision of 11 June 2014 in the event came down solely to the issue of appropriate evidence of dependency between the Appellant and Sponsor, Mr Roy Mendis.

3. The matter came before First-tier Tribunal Judge Fox who, on 21 August 2014, dismissed the appeal under the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) with reference to the fact that the Appellant had failed to discharge the burden of proof upon a balance of probabilities of the claimed dependency and also with reference to the claimed domestic arrangements between the Appellant and the Sponsor.

4. The judge said at paragraphs 7 and 8 of the determination:

> "7. The Appellant has failed to satisfy the burden upon her. There appears to be no dispute that the Appellant falls within the qualifying relationship of Regulation 7 of the EEA Regulations. The issue is of the claimed dependency and the place of residence."
>
> 8. The Appellant claims the Respondent issued a residence card to her husband on the same evidence. It would be helpful to have sight of the application form and details of the circumstances surrounding the husband's application for a residence card along with the proof of its issuance. It is reasonable to expect that this evidence is available to the Appellant with relative ease. "

The judge then went on to find that those relevant matters had not been established.

5. The judge set out the evidence before him in the following way at paragraph 5:

> "5. "There is no evidence that the Respondent filed or served a formal bundle.

> 6. The Appellant did not file or serve a formal bundle of evidence. She enclosed various documents with the notice of appeal which comprises remittance advices for the benefit of the Appellant and her husband."

6. It is right to note that the judge's summary of the additional documents provided by the Appellant with the grounds of appeal is incomplete and fails to acknowledge the information provided concerning the dependency between the Appellant and her Sponsor and the intended arrangements for them.

7. It is unarguable that the judge did not have the Respondent's bundle. Within the case file there is evidence of the bundle being sent under a letter of 13 August 2014 to Arnhem House Support Centre who received the same on 15 August and the bundle was then sent to Hatton Cross of which the hearing at Richmond, part of the same hearing centre, on or about 18 August 2014. Ultimately the bundle was then sent off to storage at Castle Park on 22 August 2014 from which the reasonable inference may be drawn that as a fact it never got to the judge and unfortunately was never seen by him with the relevant evidence within it which included the EEA2 residence card application and some supporting documents. It is notable that in the EEA application the documents recorded as submitted include evidence of dependency and documentation checklist which includes bank statements, invoices, receipts, domestic information concerning the Sponsor's accommodation. It is clear that that material never got to the judge.

8. In addition, accompanying the appeal, some further information was repeated, namely evidence of remittances previously made in July for the period 2012 to 2013 concerning remittances from R Mendis to Mr W A R K Mendis in Sri Lanka and evidence from the Sponsor giving further particulars of payments made. The evidence postdates the date of the Respondent's decision but similarly the judge in dealing with the appeal and in particular, as I have quoted at paragraph 5 and 6 of the determination, plainly did not take the documents into account or pay any regard to them or consider them, even if after the date of decision, as being relevant back to

the facts and matters in being at the date of the Respondent's decision. Nor indeed did the judge take them into account in connection with his assessment of the merits of the appeal.

9. It is most unfortunate that this material had not been presented to the judge or was not taken into account by the judge for it is plainly relevant to the merits of the issue of dependency and the arrangements the Sponsor was putting in place to care for his mother bearing in mind his father had by that stage got the necessary permit to enter and remain in the United Kingdom as the dependant of the Sponsor.

10. There was in the remarks made by the Appellant addressing the judge in the form IAFT1 other material which could have had two consequences. First, in the judge considering whether this was now an appropriate case to proceed on the papers and whether or not to have the matter re-listed for an oral hearing. Secondly, whether or not the evidence properly taken into account supported the conclusion that there was dependency and that both the Appellant and her husband were both unemployed, too old to work and were supported for their living expenses solely by the Sponsor. Accordingly there was evidence, including the Appellant's grounds, to show that she was dependent on Mr R Mendis, the EEA Sponsor.

11. In these circumstances, Mr Joseph submitted that there was illegality in the consideration of this matter by the judge because the judge had proceeded without having a Respondent's bundle. I do not accept that as a matter of law a judge must have the Respondent's bundle. In certain circumstances ignorance of material facts may be an error of law. In another case it may be possible to argue that there is an error of law on that basis of a procedural irregularity that led unfortunately to the omission of evidence. I am satisfied that there was a material procedural error of law by the judge partly compounded by the judge's ignorance of the Home office bundle and its contents, failing to take into account the grounds of appeal and the representations being made which, taken at their highest, certainly give rise to the real concern that there was not a proper consideration of the appeal.

12. As such I find the original Tribunal decision cannot stand. The original Tribunal decision will have to be re-made. I give the following directions:

DIRECTIONS

1. Re-list in the First-tier Tribunal but not before First-tier Tribunal Judges Fox, J P M Hollingworth or T Davey.

2. Hearing time estimate – 1½ hours.

3. No interpreter required.

4. Witness statements and/or any additional documents relevant to the date of decision to be submitted not less than fourteen working days before the re-making of the appeal. The witness statements to stand as the evidence-in-chief and if any expert or other evidence is to be called, notice is to be given to the other party and upon the First-tier Tribunal. All bundles other than those previously referred to should be provided not less than fourteen days before the further hearing.

Signed Date 29 November 2014

Deputy Upper Tribunal Judge Davey