



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/12465/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2015

Determination Promulgated
On 2 February 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department
[No anonymity direction made]

Appellant

and

Mohamed Fairoos Tawoodhul Hakeem

Claimant

Representation:

For the claimant:

Mr P Richardson, instructed by Kothala & Co

For the appellant:

M S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Amin promulgated 28.10.14, allowing the claimant's appeal against the decision of the Secretary of State, dated 21.2.14, to refuse his application for an EEA residence card as an extended family member of an EEA national exercising Treaty rights in the UK, pursuant to regulations 8 and 17 of the Immigration (EEA) Regulations 2006, as amended. The Judge heard the appeal on 9.10.14.
2. First-tier Tribunal Judge Hollingworth granted permission to appeal on 9.12.14.

3. Thus the matter came before me on 2.2.15 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Amin should be set aside.
5. Judge Amin found that the claimant had shown on a balance of probabilities that he is an extended family member within the definition of regulation 8(2)(c) and thus allowed the appeal.
6. In essence, the grounds of appeal suggest that the First-tier Tribunal Judge misapplied the guidance in Reyes (EEA Regs: dependency) [2013] UKUT 00314, in finding that the claimant was dependent on his EEA sponsor and cousin both in Sri Lanka and in the UK. It is submitted that the judge failed to provide adequate reasons for concluding that there was prior dependence, when there was no evidence that the sponsor was able to financially support the claimant.
7. Whilst, as Mr Richardson accepts, the decision may have been 'generous' to the claimant, by accepting the credibility of the oral evidence in the absence of documentary support, I find there is no merit in the grounds of application for permission to appeal. The judge considered the evidence as a whole and accepted that the claimant had been supported by the sponsor both in Sri Lanka and in UK both financially and emotionally. The test for dependency on the current case law is that the claimant needs material support to meet his everyday essential needs. That was the assertion in the oral evidence which the judge accepted. I cannot see how that conclusion could be regarded as irrational or perverse. Neither is it without adequate reasoning. I have to say that the reliance in §30 and §32 on what is described as a cultural norm in Sri Lanka for the extended family to provide financial support distributed through other family members tends to suggest that the relationship is not one of dependency, but that is what the judge accepted on the oral evidence. It was a conclusion to which the judge was entitled to come and for which he has provided adequate reasoning.
8. What was not adequately considered is that under regulation 17 the issue of a residence card for an extended family member is a matter of discretion in the hands of the Secretary of State. It has been argued in other cases that this does not give rise to a right of appeal, but that was not an issue taken by the Secretary of State in the present case. However, it does mean that the correct decision should have been for the First-tier Tribunal to allow the appeal to the limited extent that the decision of the Secretary of State was not in accordance with the law and that it remains for the Secretary of State to make a decision that is in accordance with the law, exercising her discretion on the basis of the factual findings of the First-tier Tribunal Judge. To that limited extent only there is an error of law in the decision of the First-tier Tribunal, which Mr Richardson accepted and did not challenge.

Conclusion & Decision:

9. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside and remade.

I set aside the decision, preserving the findings of the First-tier Tribunal;

I re-make the decision in the appeal by allowing it to the limited extent that I find that it was not in accordance with the law and that it remains for the Secretary of State to remake the decision in accordance with the findings of the First-tier Tribunal that the claimant meets the requirements of an extended family member under regulation 8.



Signed:

Date: 2 February 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award Note: this is not part of the determination.

In the light of my decision, 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).

I make no fee award.

Reasons: The appeal of the Secretary of State is allowed but only to the extent that it remains for the Secretary of State to exercise her discretion in making a decision in accordance with the law.

A handwritten signature in black ink, appearing to read "James L. Pickup". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Signed:

Date: 2 February 2015

Deputy Upper Tribunal Judge Pickup