



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

Appeal Number: IA/21183/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2015**

**Determination Promulgated
On 22 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR KHURRAM SHAHZAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Victor-Mazeli, Counsel instructed by Eden Solicitors

For the Respondent: Mr Nath, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the decision by the Secretary of State to refuse to issue him with a residence card as confirmation of his right to reside in the United Kingdom as an extended family member of an EEA national exercising treaty rights here. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is warranted for these proceedings in the Upper Tribunal.

2. The appellant is a national of Pakistan, whose date of birth is 8 July 1986. He arrived in the United Kingdom on 6 November 2010 having been granted leave to enter as a Tier 4 (General) Student Migrant under the points-based system. This leave was subsequently extended until 31 May 2014.
3. On 19 March 2014 he applied for a residence card as an extended family member of his uncle, Mr Raja Khan, who is a Dutch national.
4. On 28 April 2014 the Secretary of State gave her reasons for refusing the application. He had failed to submit any evidence to prove he was dependent upon his EEA national sponsor prior to entering the UK. Since being in the UK, he also had to prove that he was dependent upon him and he was part of the same household as him. He submitted Lloyds TSB bank statements and a Jobcentre Plus letter addressed to him, showing that he lived at the same residential address as his EEA national sponsor. But he had failed to submit any evidence to show that he was financially dependent upon his EEA national sponsor. He had failed to provide sufficient evidence that he was dependent upon and/or residing with his sponsor prior to entering the United Kingdom; and that since entering the United Kingdom he continued to be dependent upon and/or residing with his sponsor. It had been decided to refuse to issue the confirmation he sought with reference to Regulations 8(2)(a) and (c) of Immigration (EEA) Regulations 2006.

The Hearing Before, and the Decision of, the First-tier Tribunal

5. The appellant's appeal came before Judge Thomas sitting in the First-tier Tribunal at Birmingham on 9 September 2014. Both parties were legally represented. The judge received oral evidence from the appellant and his uncle. In his subsequent determination, the judge found in favour of the respondent. The appellant had not proved that he had resided in Holland or Pakistan as the sponsor's dependant or as a member of the sponsor's household. Furthermore, he had not proved that he was dependent on the sponsor here in the United Kingdom. It was arguable as to whether the appellant was a member of the sponsor's household rather than the household of the sponsor's son, since it was the sponsor's son who paid the mortgage and all the household expenditures. In the circumstances, the appellant had not proved he was entitled to reside in the United Kingdom as an extended family member under Regulation 8. The judge also dismissed an alternative claim under Article 8 ECHR.

The Grant of Permission to Appeal

6. On 24 November 2014 Designated First-tier Tribunal Judge Macdonald granted the appellant permission to appeal to the Upper Tribunal. The judge had considered the evidence in his findings commencing at paragraph 12, and it was arguable in paragraph 14 that the judge did not make clear what evidence of the sponsor and the appellant was being rejected or accepted, and this might amount to an arguable error in law. Contrary to the grounds, the judge had considered Article 8 and had taken account of the Immigration Rules and referred to well-known case law. There therefore appeared to be no merit in this ground of appeal. Nevertheless, for the sake

of clarity, permission was granted on all grounds in line with **Ferrer (Limited appeal grounds; Alvi) [2012] UK 00304 (IAC)**.

The Hearing in the Upper Tribunal

7. At the hearing before me, Ms Victor-Mazeli, who did not appear below, relied on an extensive skeleton argument prepared by a colleague. She maintained that the judge had erred in law in both his disposal of the claim under the Regulations 2006 and in his disposal of the Article 8 claim. In reply, Mr Nath contended that the judge had given adequate reasons for dismissing the appeal. .

Discussion

8. I find the judge gave adequate reasons for dismissing the appeal under the Regulations of 2006. At paragraph 14 he addressed the issue of prior and current financial dependency. Although he switched back and forth between the two, it is tolerably clear that the judge rejected the evidence of the appellant and the sponsor as to:

- (a) prior financial dependency; and
- (b) current financial dependency.

9. Ms Victor-Mazeli submitted that the judge ought to have accepted the oral evidence of the sponsor and the appellant on the question of *prior financial dependency*. But it was open to the judge to reject the oral evidence of the witnesses for the reasons he gave:

It is said that the sponsor supported the appellant monthly in Pakistan using Western Union transfer monies to the appellant's mother and later to the appellant himself. Again there is no documentary evidence, no evidence to show any attempt made by the appellant to secure such evidence even from records. I am told, and it has not been rebutted, the appellant's college was named as his sponsor and that there was no mention of his uncle being his sponsor. The sponsor's annual income is £5,832. It is difficult to see how he can support his own family and the appellant and pay for the appellant's education from that level of income. There is no other evidence of the sponsor's personal financial circumstances before me. I accept the sponsor's son earns £60,000 annually, and that he bears the household expenses. However, the appellant's case is that he is dependent on his uncle, not on his first cousin who was a British citizen.

10. Accordingly, the principal reason given by the judge for disbelieving the oral evidence of the sponsor and the appellant was the absence of Western Union money transfer receipts. But the judge also reasonably questioned the credibility of the claimed financial support in view of the sponsor's low annual income. The sponsor's low annual income was principally relevant to the question of present financial dependency, but it also had some relevance to the question of whether it was likely that the sponsor was likely to have been able to support the appellant when he was living in Pakistan. In any event, the absence of documentary evidence of remittances

to Pakistan was sufficient by itself to sustain the adverse credibility finding with regard to prior financial dependency.

11. Ms Victor-Mazeli also took issue with his finding that the appellant was not a member of the sponsor's household in the UK, despite the fact that it was accepted in the refusal letter that they lived at the same residential address.
12. It was entirely legitimate for the judge to question whether the appellant was properly to be treated as a member of the sponsor's household, as opposed to being treated as a member of the household of the sponsor's son, in view of the fact that it was the son who was paying the mortgage and all the household expenditure. He did not reach a conclusion, and effectively left this question unresolved. But it was not a question which he needed to resolve, as he made a clear finding that there was no prior financial dependency; and that the appellant had not been a member of the sponsor's household in either Pakistan or Holland.
13. In order to qualify as an extended family member, the appellant had to prove:
 - (a) prior dependency and present dependency; or
 - (b) prior membership of a household and present membership of a household;
 - (c) prior dependency and present membership of a household; or
 - (d) prior membership of a household and present dependency.
14. It did not ultimately matter whether the appellant could prove present membership of the sponsor's household, or indeed present dependency. For he had to prove one of these *in combination with* prior dependency or prior membership of the sponsor's household. Since it was not part of his case that he satisfied the requirement of "prior membership of a household", in order to succeed in his appeal he had to prove "prior dependency". As previously noted, the judge gave adequate reasons for finding that the appellant had not shown prior dependency.
15. In the application for permission to appeal, it is argued that the judge erred in law in not applying the two stage approach proved by the Court of Appeal in **MF (Nigeria) v SSHD [2013] EWCA Civ 1192**. The contention is wholly without merit. The judge's consideration of the Article 8 claim is impeccable.
16. At paragraph 16 he considered whether the appellant could bring himself within paragraph 276ADE of the Rules. He rightly answered this question in the negative.
17. At paragraph 17 he asked himself whether the appellant had a family life claim within the scope of Appendix FM, and rightly answered this question in the negative. He went on to observe that the decision did not require the appellant to leave the United Kingdom, and there were no removal directions against him. In the light of these matters, he found that there were no particular reasons at this stage which required him to consider proportionality outside the Rules. But in the same

paragraph, he made it clear that he was guided inter alia by the case law of **MM [2013] EWHC 1900 (Admin)**, **Gulshan [2013] UKUT 00640 (IAC)**, **Nagre [2013] EWHC 720 (Admin)** and **Haleemuden v Secretary of State for the Home Department [2014] EWCA Civ 558**. In the light of these authorities, the judge was not bound to undertake a freestanding proportionality assessment outside the Rules in circumstances where the interference was very limited and there were no compelling circumstances disclosed by the evidence that were capable of rendering the proposed interference a disproportionate one.

Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

The First-tier Tribunal did not make an anonymity order.

Signed

Date **9 January 2015**

Deputy Upper Tribunal Judge Monson