



IAC-AH-CO-V1

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

Appeal Number: IA/00343/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 13th January 2016**

**Decision & Reasons Promulgated
On 26th January 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MUHAMMAD ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Javed of Reiss Solicitors

For the Respondent: Mrs Pettersen, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Boyd made following a hearing at North Shields on 13th April 2015.

Background

2. The appellant is a citizen of Pakistan born on 17th September 1990. He applied for a residence card as a confirmation of a right to reside in the UK but was refused on 10th December 2014 on the grounds that the Secretary of State was not satisfied that he was either related as claimed to the EEA national sponsor, or that he was dependent upon or residing with the

sponsor prior to entering the UK and that since he entered the UK he had continued to be so dependent.

3. The judge dismissed the appeal in the appellant's absence. Later in the day he was given a copy of a fax seeking an adjournment of the proceedings on the basis that the EEA sponsor was ill and could not attend. The judge said that there was no explanation for the lack of attendance of the appellant. There was an affidavit from the sponsor in the documentation but in any event it was clear from the evidence that the appellant was not in a position to establish dependency prior to him entering the UK.
4. He considered all of the evidence and dismissed the appeal.
5. The appellant sought permission to appeal on the grounds that the appellant was unrepresented and was unable to decide about what to do. The sponsor had been taken ill and an emergency prescription from an out of hours' doctor was sent to the Tribunal. He had not received the respondent's bundle but he did have former evidence such as remittance receipts and witness statements which he could have provided at the hearing in order to prove prior dependency. Had the appellant turned up without the sponsor it would have been a wasted journey.
6. Permission to appeal was granted by Judge Phillips on the grounds that it was arguably unfair to proceed with the appeal since there had been an administrative error preventing the judge seeing the adjournment application prior to the hearing.

Submissions

7. Ms Javed told me that the appellant had contacted their emergency line on the Sunday before the hearing and discussed with them the option of applying for an adjournment because his sister-in-law was unwell. He could have provided remittances since 2010 when his brother started the relationship with her. There had been a procedural irregularity because the appellant had not had sight of the respondent's bundle and wanted to have the opportunity to deny what had been said on his behalf in the past.
8. Mrs Petterson submitted that there had not been any irregularity but even if there had been it was immaterial because the appellant could not establish dependency on his brother's wife prior to his arrival in the UK. The couple only married in 2011 some six months after the appellant's arrival here and it was only at that stage that she became a part of his extended family.

Findings and Conclusions

9. There is no error of law in this decision.
10. The judge was perfectly entitled to proceed in the appellant's absence. There was no explanation for his lack of attendance. Although he says in

the grounds that he was unable to decide what to do because he was unrepresented, he did in fact seek advice on the day before the hearing from his present representatives who were in a position to advise him about whether he should attend or not. Furthermore a prescription from an out of hours' doctor is not in itself evidence that the witness was unable to attend court.

11. Moreover, even if she had attended, the appellant could not have been in a position to establish dependency upon her prior to entering the UK because she only became a family member some six months afterwards.
12. It is clear that, the judge was entitled to conclude that he could not have succeeded even if she had been a family member. The grounds of appeal state in terms that the appellant had been dependent on his brother and his wife since 28th July 2011. The affidavit from his father makes no reference at all to any dependency before he left Pakistan. Finally the covering letter from the appellant's original representatives suggest that the appellant has been financially dependent on his brother for a long time but only makes reference to dependency on his brother and the EEA national at the time of the application.
13. Finally, as Mrs Pettersen pointed out, even dependency on the brother is in some doubt since the appellant himself made an application in January 2013 after his leave to remain as a student had expired for a residence card as the spouse of a Slovakian national which was refused and he was later divorced.
14. Accordingly there is no error of law in this determination, firstly because it was entirely reasonable for the judge to proceed in the appellant's absence and second because it was quite clear from the documentation before him that this was not an appeal which could have ever succeeded.
15. The judge did not err in law. His decision stands. The appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor