



IAC-UT

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

Appeal Number: IA/12278/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2016**

**Decision & Reasons Promulgated
On 18 March 2016**

Before

**Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)**

Between

**QASIM SUBHANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.
For the Respondent: Mr I Jarvis

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge J W H Law) refusing his appeal against a decision made by the respondent on 13 March 2015 refusing his application for a residence card as an extended family member. There was no appearance by or on behalf of the appellant at the hearing

before me. I am satisfied that the notice of hearing was properly served at the appellant's address for service. No explanation has been received for his failure to attend. In these circumstances I am satisfied that the proper course is to proceed with this hearing.

Background

2. The appellant is a citizen of Pakistan born in 1984. On 30 November 2014 he applied for a residence card as the nephew of his sponsor, a German citizen living in the UK. His application was refused as the respondent was not satisfied that the appellant had been dependent on his sponsor both in Pakistan and in the UK. The appellant appealed against this decision asking for his appeal to be decided on the documentary evidence without an oral hearing.

The Findings of the First-tier Tribunal Judge

3. The judge considered the documents in the appellant's bundle which included statements by the appellant and the sponsor. The appellant had said that while he was studying in Pakistan his sponsor was supporting him by sending money and there were money transfer vouchers dated between March 2009 and April 2011 showing that money was being sent to the appellant at the rate of £150 per month. However, the judge commented that the appellant had not explained the source of a bank transfer for Rs350,000 in February 2011. He also noted that the appellant said in his statement that the sponsor "is responsible for my maintenance and accommodation, I am dependent on him for my daily life and living. I am currently living with him under the same roof." However, the sponsor in his statement only referred to money which he had sent to Pakistan when the appellant was studying there.
4. The judge was not satisfied that the appellant could meet the requirements of reg 8(2) of the Immigration (European Economic Area) Regulations 2006 for the reasons set out at [10]-[13]. In the light of the lack of explanation for the transfer of Rs350,000 the judge could not be satisfied that the appellant had been dependent on the sponsor while in Pakistan. The appellant had also not been living in the same household as the sponsor while he was living in Pakistan. He accepted that the appellant was now living in the same household in the UK but there was no evidence that he had been doing so between April 2011 and January 2013.
5. The evidence of financial dependency in the UK was recent. Payments of £50 a month only began in August 2014 and there were regular bank transfers of £420 which the appellant was receiving in 2012 which had not been explained which suggested that he was at that stage receiving financial support from another person. The judge also took into account the point made by the respondent that the sponsor did not have a national insurance number prior to 2014 and the appellant had not commented on this matter.

The Grounds of Appeal and Submissions

6. In his grounds the appellant argues that the judge did not consider the evidence of the money transfers and misdirected himself about how the sponsor could pay a certain amount of money in a month. It is further argued that the judge did not refer to the dependency of the appellant on the sponsor in Pakistan and that he failed to take into account relevant case law and in particular Jia C-1/05 [2007] Imm AR 439 where the CJEU found that there was no requirement for a national court to consider the reasons for the dependency on a union citizen.
7. Permission to appeal was granted on the basis that there were aspects of favourable findings in the judge's decision, which raised questions as to whether there had been a proper application of the evidence to the requirements of the law as set out in the grounds of appeal.
8. Mr Jarvis relied on the rule 24 response which submits that the judge had considered all the relevant evidence and had given adequate reasons for his findings of fact. The finding that the appellant was not living in the same household as the sponsor between April 2011 and January 2013 was properly open to the judge.

Assessment of Whether there is an Error of Law

9. I am not satisfied that the judge erred in law in reaching his findings and conclusions. The issue of dependency and whether the appellant and his sponsor were living in the same household were issues of fact for the judge to resolve on the evidence before him. He explained why he was not satisfied that the appellant had been dependent on his sponsor in Germany. There is nothing to indicate that the judge did not approach the matter in accordance with Jia.
10. The grounds argue that in the light of the numerous money transfer vouchers produced at the hearing the appellant was able to meet the requirements of the regulations. However, in substance, the grounds are an attempt to re-argue issues of fact where the judge reached findings properly open to him. Similarly, the issue of whether and when the appellant and the sponsor had been living in the same household was an issue of fact that the judge resolved on the evidence before him. His findings and conclusions were properly open to him for the reasons he gave.

Decision

11. The First-tier Tribunal did not err in law and it follows that its decision stands.

Signed *HJ E Latter*
H J E Latter
Deputy Upper Tribunal Judge

Date: 2 March 2016