



IAC-HW-AM-V1

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

Appeal Number: IA/50496/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 17 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**GHULAM FARID
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath of the Specialist Appeals Team
For the Respondent: Mr A Gondal of Berkshire Law Chamber

ERROR OF LAW DECISION AND REASONS

The Respondent

1. The Respondent (the Applicant) is a citizen of Pakistan born on 1 April 1974. He states he arrived on 31 December 2010 with leave to enter as a Tier 4 (General) Student Migrant, expiring on 17 May 2014, and on 16 May 2014 he submitted an application for a residence card under Regulation 8 of the Immigration (EEA) Regulations 2006 as amended as an extended family member of his cousin, a Spanish national exercising treaty rights in the United Kingdom as a worker.

The Secretary of State's Decision

2. On 8 December 2014 the Secretary of State (SSHD) refused to issue a residence card for the reasons given in a letter of 8 December 2014 (the reasons letter). The SSHD made enquiries about the Appellant's Sponsor's employment and considered that his employer company was not a genuine business. The Applicant had supplied a non-functioning telephone number for the company and on-line searches did not disclose anything relating to the business of the company. Consequently, the SSHD considered the Applicant's Sponsor was not a worker and so not a qualified person within the meaning of Reg.6 of the 2006 Regulations and refused the application with reference to Regs.6 and 8(2) of the 2006 Regulations. The SSHD had also considered the evidence of dependency and was not satisfied the Applicant had shown he had at any time been dependent on his Spanish cousin.
3. On 9 January 2015 the Applicant lodged notice of appeal under Reg.26 of the 2006 Regulations and Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds are entirely formulaic and generic and include a reference to Article 8 of the European Convention but no particulars are given why or how the decision might breach any rights protected by Article 8.

The First-tier Tribunal Proceedings

4. By a decision promulgated on 6 July 2015 Judge of the First-tier Tribunal Majid allowed the appeal but did not specify whether the appeal was allowed under the 2006 Regulations or by way of reference to Article 8 of the European Convention.
5. On 9 October 2015 Judge of the First-tier Tribunal McDade granted the SSHD permission to appeal on the basis it was arguable the Judge had erred in law because at no point had he set out the nature of the decision the Applicant had appealed and his treatment of the evidence was inadequate.

The Upper Tribunal Hearing

6. The Applicant attended the hearing but took no active part in the proceedings, the purpose and procedure of which I explained to him.
7. For the SSHD Mr Nath submitted the Judge had not identified the substance of the original decision appealed against by the Applicant. He had simply referred at para.2 to a "negative decision". The Judge had referred at paras.5 and 7 of his decision to the evidence but had given no details of the substance of the evidence. At para.10 he had referred to the Applicant's claimed payment of fees to a college by his Spanish cousin but again had given no details such as the movement of funds or subsequently made a finding whether he accepted that evidence.

8. At paragraph 14 he had set out an extract from the headnote of the determination in *Dauhoo (EEA Regulations - Reg 8(2)) [2012] UKUT 79 (IAC)* which did appear to have relevance to the appeal but failed to give any reasons to explain his conclusion at para.15 of his decision that the Applicant was a dependent of his Spanish cousin.
9. He concluded that the decision contained errors of law such that it should be set aside in its entirety. The decision did not inform the parties and in particular the SSHD why the appeal had been decided against the SSHD.
10. For the Applicant Mr Gondal referred me to paras.2, 6, 8 and 10 in which the Judge had stated he had considered all the other evidence to which he had referred. There was no need for the Judge to set out the details of the SSHD decision. His consideration of the evidence at para.10 was adequate. He had given the reason for accepting the evidence, namely that the oral evidence of the Appellant "corroborated the fact that he was dependent on his cousin throughout as established by the evidence contained in the various documents in the bundle". Additionally, the Judge had rightly referred to and set out the jurisprudence of the determination in *Dauhoo*. The decision contained no error of law and should stand.

Findings and Consideration

11. The First-tier Tribunal's decision is generic. The Judge did not engage with the claim because the SSHD did not find the Applicant's Sponsor, his Spanish cousin, to be a qualified person within the meaning of Reg.6. The Judge did not engage with any specific or detailed aspects of the documentary evidence. The consequence is that the SSHD as the party losing the appeal was not given any reason why the appeal had been allowed.
12. A Judge may have some measure of discretion. When judicial discretion is exercised it is incumbent on the Judge to explain the reasons why such discretion has been exercised in a particular way and especially so that the disappointed party may understand why the Judge reached the decision in question.
13. The Judge gave no explanation why he did not address the SSHD's refusal of the Applicant's claim under Article 8 of the European Convention whether within the Immigration Rules, by reference to paragraph 276ADE, or outside the Rules. In the event this is not a material error because of the subsequent jurisprudence in *Amirtyemour and others (EEA appeal; human rights) [2015] UKUT 00466* which was promulgated on 4 August 2015 after the hearing of this appeal on 26 June and affirmed for different reasons by the Court of Appeal in *TY (Sri Lanka) v SSHD [2015] EWCA Civ.1233*.
14. For all these reasons, I find the First-tier Tribunal decision contains errors of law such that it should be set aside in its entirety. Having regard to s.12 Tribunals, Courts and Enforcement Act 2007 and Practice Statement

7(B) and the nature of the errors of law, I consider it appropriate for the appeal to be remitted to the First-tier Tribunal to decide.

Anonymity

15. There was no request for an anonymity direction and having considered the matter I find none is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained errors of law such that it should be set aside in its entirety. The matter is remitted to the First-tier Tribunal to decide afresh.

Anonymity direction not made.

Signed/Official Crest

Date 12. ii. 2016

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal