



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: EA/01275/2015**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 6 October 2017**

**Decision & Reasons  
Promulgated**

**On 8 November 2017**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MR AHMED RAZA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Iqbal, Counsel, instructed by Rainbow Solicitors LLP

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. On 18 September 2015 the respondent made a decision refusing to issue him with a residence card as confirmation of a right of residence under EU law as the extended family member of an EEA national exercising treaty rights in the UK. His appeal was heard by First-tier Tribunal (FtT) Judge Oliver, who, in a decision sent on 15 November 2016, dismissed it. At paragraph 8 the judge stated:

“8. I am satisfied that the appellant and his uncle are related as claimed and that his uncle was and is a qualified person under

the regulations. The appellant has been unable to substantiate with documentary evidence his claim that his uncle was supporting him individually when the uncle was in Spain and he was living with the uncle's and his own families in Pakistan. What is more important, however, is that when he moved to the United Kingdom he became self-sufficient and for a period of at least 22 months, from 2 March 2012 to the start of 2014, he received no funds from his uncle. In these circumstances, while I accept that he has been living in the same household as his uncle and has been receiving small sums from time to time, he has not shown prior dependency or prior membership of his uncle's household. His appeal therefore fails (***Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79***)."

2. The appellant's grounds of appeal are extremely short. The only effective submissions made are

(1) that the judge failed to consider the evidence before him stating that the appellant and his sponsor have been living together since the sponsor arrived in the UK and that their household is common and shared; and

(2) that:

"the appellant was living in the same common household in Pakistan prior to coming to the UK and the sponsor was financially supporting him [the appellant]. The appellant is at present living in the same household as that of the sponsor since the sponsor arrived in the UK".

3. At the hearing both parties requested an adjournment on the basis that the Court of Appeal had now handed down judgment in the ***Sala*** [2016] UKUT 411 (IAC) case, reversing the UT reported decision in this case which had held that in respect of extended family members there was no right of appeal. (In her Rule 24 response the respondent had sought to rely on the UT decision in ***Sala***). Both submitted that it would be safest to adjourn because the Court of Appeal might have given/be giving further guidance on how judges should deal with appeals from extended family members (EFM's). I refused their request. There has been no indication from any source that the Court of Appeal was concerned with substantive as opposed to jurisdictional issues surrounding EFMs and there is already Court of Appeal case law on the substantive requirements relating to EFMs. I would observe that, presciently if not fortuitously, neither the FtT Judge nor the UT Judge who granted permission sought to apply the UT decision in ***Sala*** in any event.

4. I have no hesitation in concluding that the appellant's grounds are not made out. Insofar as they appear to raise a disagreement with the judge's findings of fact, they do no more than reassert the position put forward by the appellant at the hearing that he had been dependent on his uncle both prior to and since arrival in the UK. The grounds do not seek to say that

any particular item of evidence was overlooked. Furthermore, it is abundantly clear that both when applying to the respondent for a residence card and before the FtT Judge, the appellant singularly failed to substantiate his claim to prior dependency.

5. Insofar as the grounds seek to raise a legal argument, the simple fact of the matter is that in order to meet the requirements of regulation 8 of the European Economic Area (EEA) Regulations 2006 an applicant has to establish both prior and present dependency or prior and present membership of the same household: see **Duhoo (EEA Regulations - reg 8(2))** [2002] UKUT 79 (IAC). In his application to the respondent the appellant failed to substantiate his application for a residence card under regulation 8. It was correctly pointed out that the appellant had not mentioned being dependent on his uncle when he was interviewed in connection with his student visa on 7 February 2012 and had provided no documentary evidence of the address at which he claimed to be residing with his uncle.
6. Before the judge the appellant gave oral testimony amplifying his witness statement. As recorded by the judge at paragraph 4, the appellant said he had tried but failed to provide documentary evidence of his claims regarding dependency on and membership of a household with his uncle “but had now collated and submitted it”. The appellant’s uncle corroborated the appellant’s claims, giving further details of his employment. However, as the judge correctly appraised matters at paragraph 8, the appellant’s further documentary evidence did not establish either prior dependency on his uncle or prior membership of his uncle’s household. The judge’s assessment at paragraph 8 that “the appellant has been unable to substantiate with documentary evidence his claim that his uncle was supporting him individually when the uncle was in Spain and that he was living with the uncle’s and his own families in Pakistan” was based squarely on the state of the evidence considered as a whole. Mr Iqbal’s response to this evident state of affairs was to argue that the judge should have been prepared to accept the evidence of the appellant and his uncle solely on the basis of their oral testimony. However, as the UT has emphasised on many occasions when it comes to proving an EEA residency, the respondent is entitled to require applicants to substantiate their claims by documentary evidence and tribunal judges in turn are entitled to count against appellants a failure to remedy that lack of substantiation on appeal. It was for the appellant to prove his case and it was entirely within the range of reasonable responses for the judge to refuse the appeal for lack of substantiation by way of documentary evidence. This is not a case where there were any insuperable obstacles to obtaining such evidence if the claimed dependency and membership of the same household did in fact exist.
7. The appellant seeks to rely on the fact that at paragraph 8 the judge appears to accept present dependency and present membership of the same household. Two difficulties stand in the way of such reliance. First, it is not clear that the judge accepted present dependency: he refers only to accepting that the appellant “has been living in the same household as

his uncle and has been receiving small sums from time to time". Second, even assuming that the judge meant present dependency and/or present membership of the uncle's household, that was insufficient to meet the requirements of regulation 8 which require (1) prior dependency or membership of the same household; and (2) present dependency or present membership of the same household. So the judge properly concluded at paragraph 8.

8. Mr Jarvis sought to submit that even in respect of the judge's apparent acceptance of present dependency and/or present membership of the same household that would not have sufficed to meet the "present" test as the case law required that such present dependency/membership of a household be "very recent". He cited **Bigia & Ors [2009] EWCA Civ 79** at 43.
9. However, on the basis of the judge's findings, it cannot be excluded that he was prepared to accept dependency/membership of the same household since the uncle's arrival in the UK in January 2014. If correct, such a period (beginning of 2014 to the date of the hearing) would appear to constitute "very recent dependency" in any event. However, for the reasons given above, this conclusion does not assist the appellant in showing he met the requirements of Regulation 8 in full.
10. For the above reasons I conclude that the decision of the FtT Judge is unaffected by legal error and accordingly it shall stand.

No anonymity direction is made.

Signed

Date: 7 November 2017



Dr H H Storey  
Judge of the Upper Tribunal