

Upper Tribunal
(Immigration and Asylum
Chamber)
EA/00448/2016



Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House
On 9 February 2018

Decision & Reasons Promulgated
On 16 March 2018

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Adnan Kabir
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant.

For the Respondent: MS Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and background facts:

1. By a "*Decision and Directions*" promulgated on 12 February 2018, I set aside the decision of Judge of the First-tier Tribunal Kelley dismissing the appellant's appeal against the respondent's decision of 22 December 2015 to refuse his application for a residence card as confirmation of his right to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 (hereafter the "EEA Regulations") as an extended family member of Mr Semaak Butt (hereafter the "sponsor"), a Dutch national said to be exercising Treaty rights in the United Kingdom.
2. As stated in my "*Decision and Directions*" dated 12 February 2018, the decision of Judge Kelley was set aside because the judge had erroneously (through no fault of his own and in reliance upon Sala (EFMs: Right of appeal) [2016] UKUT 00411 (IAC)) dismissed the appeal on the ground that the First-tier Tribunal did not have

jurisdiction to decide the appeal of an extended family member under the EEA Regulations.

3. In my “*Decision and Directions*” dated 12 February 2018, I gave my reasons for re-making this appeal in the Upper Tribunal and for adjourning the hearing on 9 February 2018 so that the appellant was served with the documents that were submitted by Ms Ahmad on 9 February 2018. In essence, the reason was that it was necessary for the appellant to have an opportunity to comment on the said documents. I therefore gave directions for the appellant to lodge any submissions he wished to make in response to the said documents no later than 4 pm on the sixth working day after the “*Decision and Directions*” was sent to the parties.
4. The deadline for the appellant to lodge his submissions expired on 20 February 2018.
5. I received the papers for this case on 12 March 2018. The appellant has not lodged any submissions or any evidence in response to date.
6. As the appellant had requested, by the letter from his representatives dated 31 January 2018, that his appeal be decided on the papers, I proceed to re-make the decision on the appellant's appeal on such material and evidence as is before me.

Assessment

7. As stated in the “*Decision and Directions*” dated 12 February 2018, there are two issues in this appeal, as follows:
 - (i) (issue 1) whether the appellant has established his relationship with his sponsor; and
 - (ii) (issue 2) whether he has established that he was residing with and/or dependent upon the sponsor either immediately before his arrival in the United Kingdom or since his arrival in the United Kingdom.
8. In relation to issue 1, the only document that the appellant has submitted to establish his claimed relationship with his sponsor is the “*Family Registration Certificate*” (“FRC”) issued by the National Database and Registration Authority dated 26 May 2015. However:
 - (i) The respondent's document verification report (“DVR”) dated 9 December 2015 states that the FRC is of genuine paper stock but that the document had been incorrectly personalised and does not appear as expected. As a consequence, the certificate could not be relied upon as evidence of the holder's nationality or identity or the family relationship as claimed on the certificate.
 - (ii) The appellant has not taken the opportunity that he has been given (by way of the directions dated 12 February 2018) to comment on the DVR.
 - (iii) The appellant's witness statement and the sponsor's statement do not address the DVR. The appellant has not taken the opportunity to submit further witness statements in response to the DVR. No one attended the hearing before the Upper Tribunal to be cross-examined. As a consequence, I do not have any evidence that addresses the DVR.
 - (iv) There is no DNA evidence to establish the relationship between the appellant and the sponsor. The grounds contend that it is open to the respondent to request a DNA test which ignores the fact that the burden of proof is upon the appellant to establish his claimed relationship.

- (v) There are no identity documents to establish precisely how the appellant and the sponsor are related. The appellant has submitted his own birth certificate. However, save for a family tree, there is no documentary evidence such as birth certificates of all relevant persons in the bloodline as would establish precisely how the appellant and the sponsor are related. The family tree amounts to no more than a pictorial representation of an individual's assertion of the claimed relationship.

For the reasons given above and on the whole of the evidence, I find that the appellant has not discharged the burden of proof upon him to establish, to the standard of the balance of probabilities, that he and his sponsor are related as claimed.

9. Concerning the issue of whether the appellant has been residing with the sponsor since his arrival in the United Kingdom, I have noted that his (the appellant's) application for a residence card shows that the address he gave for himself at page 11 of the application (page 26 of the bundle) is the same as the address his sponsor gave for himself at page 13 of the application (page 28 of the bundle), i.e. [... Road, Thornton Heath]. However, the document from HM Revenue & Customs at page 5 of the bundle and the tax return on page 12 of the bundle give a different address for the sponsor, i.e. [... Street, Burnley].
10. There is no evidence of financial dependency at all, whether as to financial dependency immediately prior to the appellant's arrival in the United Kingdom or since his arrival in the United Kingdom. For example, there is no evidence of bank statements showing money transfers from the sponsor to the appellant whilst he (the appellant) lived abroad immediately prior to his arrival in the UK. The only evidence is that the appellant and the sponsor have asserted in their witness statements that the sponsor maintained the appellant in Pakistan. Such bare assertions, unsupported by any documentary evidence, are insufficient to discharge the burden of proof on the balance of probabilities.
11. Likewise, there is no evidence of the appellant being a member of the sponsor's household, whether immediately prior to the appellant's arrival in the United Kingdom or since his arrival in the United Kingdom apart from mere assertions which are unsupported by any documentary evidence. Again, such bare assertions, unsupported by any documentary evidence, are insufficient to discharge the burden of proof on the balance of probabilities.
12. Given the evidence described at paras 9-11 above, I find that the appellant has not discharged the burden of proof upon him to establish, on the balance of probabilities, that, since his arrival in the United Kingdom, he has been residing with the sponsor or that, immediately prior to his arrival in the United Kingdom or since his arrival in the United Kingdom, he was dependent on the sponsor or was a member of the sponsor's household.
13. The reasoning and findings at paras 10-12 are determinative of the appellant's appeal irrespective of whether it is necessary for the appellant to establish that he is the sponsor's relative (paras 5 and 17 of SM (Algeria) v Entry Clearance Officer, UK Visa Section [2018] UKSC 9 refer).
14. The appeal is therefore dismissed.

Decision

The decision of Judge of the First-tier Tribunal Kelly involved the making of a material error of law such that the decision to dismiss the appeal for want of jurisdiction is set aside.

The Upper Tribunal re-made the decision on the appellant's appeal.

The appellant's appeal against the respondent's decision of 22 December 2015 is dismissed.



Signed
Upper Tribunal Judge Gill

Date: 15 March 2018