



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

Appeal Number: IA/28692/2015

THE IMMIGRATION ACTS

Heard at Field House

On 3rd January 2018

**Decision & Reasons
Promulgated**

On 22nd February 2018

Before

**UPPER TRIBUNAL JUDGE ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

Between

**BHUTTU PAUL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis (Counsel)

For the Respondent: Mr I Jarvis (Senior HOPO)

DECISION ON FINDING AN ERROR OF LAW

1. This is an appeal against determination of First-tier Tribunal Judge I Ross, promulgated on 17th August 2016, following a hearing at Taylor House on 22nd July 2016. In the determination, the judge dismissed the Appellant's appeal under the EEA Regulations. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before us.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 10th July 1992. On 26th February 2015, he applied for a residence card as confirmation of his right to reside in the UK. By a decision dated 29th July 2015, the application was refused on the basis of the Immigration (European Economic Area) Regulations 2006. The reason given was that, from the documentation provided, the Respondent Secretary of State was unable to verify the Appellant's relationship with his EEA Sponsor uncle, a Mr. Rahman. It was determined that there was insufficient on the claimed relationship with the uncle. Furthermore, the evidence did not show that the Appellant's dependency on his sponsoring EEA uncle in Bangladesh.

The Judge's Findings

3. At the hearing before Judge Ross, there was evidence by the Appellant to the effect that his uncle would transfer money regularly to him. The judge found that the Sponsor's evidence was that it was only a small amount that was transferred once a year. The judge concluded that, "I accept that the Appellant has also produced evidence of money transfers directly to him from his uncle consisting of one transfer in 2007 and two transfers in 2010" (paragraph 9). However, he then went on to conclude that the chronology was telling in this respect, in that it showed that the Appellant was never part of the Sponsor's household in Bangladesh or in the UK between 2010 to 2014; that he came to the UK not as a dependent on his uncle but was accommodated free by Mr Rahman; that the Appellant did not come to the UK to join his uncle and continue his dependency; and that the Appellant's dependency on his uncle in the UK only began in 2014, and was probably now only dependent upon his uncle in this country, due to his inability to work in the UK (see para 10).
4. The appeal was dismissed.

Grounds of Application

5. The Grounds of Appeal state that the Appellant's uncle's evidence, with regard to how often he transferred money to the Appellant directly, was in fact entirely consistent with the evidence given by the Appellant. Insofar as the judge found there to be an inconsistency, this was factually mistaken, such that the judge fell into error: see **E and R v Secretary of State [2004] EWCA Civ 49**. The grounds stated that the judge had made no other adverse finding with respect to the credibility of the Appellant's account or indeed of any other witness. The evidence before the judge was that the Appellant's father was a labourer and a small hold farmer who suffered from diabetes and back pain and this impacted upon his ability to work, leading the Appellant to become dependent upon his uncle, Mr. Rahman.
6. On 9th March 2017, the Tribunal granted permission to appeal on the grounds that "the First-tier Tribunal might have misunderstood the

evidence and so built the conclusion on an unsustainable premise” (paragraph 3).

7. On 20th March 2017, a Rule 24 response was entered to the effect that, as clarified by the Upper Tribunal in **Sala (EFMs: Right to Appeal) [2016] UKUT 411**, such cases do not attract a right of appeal.

Submissions

8. At the hearing before us on 3rd January 2018, Mr Jarvis, appearing as Senior Home Office Presenting Officer, on behalf of the Secretary of State, submitted that this Tribunal should be aware of the Court of Appeal’s order, dated 9th November 2017, in **Khan v Secretary of State for the Home Department & Anor [2017] EWCA Civ 1755 (09 November 2017)**, which ruled that the decision of the Upper Tribunal that there was no valid appeal, was to be set aside, and the case remitted to the First-tier Tribunal for a rehearing on all the issues. That being so, submitted Mr Jarvis, the practice of the Secretary of State now was to apply for all such cases to be stayed.
9. The issue in this appeal, however, was what evidence existed before First-tier Tribunal Judge Ross in relation to the dependency of the Appellant upon his uncle, prior to his entry to the UK.
10. To this, Mr Lewis, appearing on behalf of the Appellant, submitted that there was, in fact, substantial evidence to this effect. Although the judge had made a finding that, “the Sponsor’s evidence was that it was a small amount once a year” (paragraph 9) which was sent by the sponsoring uncle, the evidence was much wider, according to Mr Lewis. This was notwithstanding that there were only three direct money transfers from the Appellant’s uncle to the Appellant, as noted by the judge (at paragraph 9).
11. Mr Lewis nevertheless made good his argument by drawing attention to page 60 of the bundle which refers to the Appellant’s mother’s evidence; to page 107 of the bundle; which contains a statement that there was a high degree of reliance upon the uncle; to page 86; to page 87; and page 77. Mr Lewis submitted that the evidence showed that there were regular payment of monies to the Appellant. The Appellant’s bank statement (at pages 22 to 28) confirms the bank transfers which can be matched by what appears at pages 40 to 42. Our attention was also drawn to the “spot cash” tracking number (which correlates with page 29).
12. In reply, Mr Jarvis relied upon the case of **Aladeselu [2013] EWCA Civ 144** which highlighted the importance (at paragraph 45) of the requirement that the person “continues to be dependent upon [the EEA national] or to be a member of his household”, and that in this case, submitted Mr Jarvis, there had been a break in the dependency on the Sponsor by the Appellant.

13. However, Mr Jarvis conceded that First-tier Tribunal Judge Ross had not engaged with all the different sources of the funds upon which the Appellant was dependent with respect to his uncle. He had not grappled with all the sources of income that the Appellant could draw upon. There had been no attempt to trace the entire money trail and to locate the trail into any particular household. The judge also had not engaged with the difference between “dependency” and “topping up” of the Appellant’s income. Moreover, it had not been ascertained precisely what the household budget was of the Appellant and how it was being met. If the individuals concerned (such as the Appellant’s father) were not working it had to be enquired as to why they were not working. Finally, if there were breaks in the dependency so as to impact upon “continuity” the significance of these breaks had to be evaluated.

Decision

14. Having heard both parties, we have come to the following conclusion.
15. First, the Respondent Secretary of State had opposed this appeal on the basis (see Rule 24) that this Tribunal has no jurisdiction as a result of what was decided in **Sala (EFMs: Right of Appeal) [2016] UKUT 411**.
16. At the error of law hearing today, both parties agree that the decision in **Khan v Secretary of State for the Home Department & Anor** confirms that jurisdiction exists to hear this appeal. The decision in the Court of Appeal was since been approved by the Supreme Court in **SM (Algeria) v Entry Clearance Officer, UK Visa Section** [2018] UKSC 9 (14 February 2018).
17. At this hearing also, Mr Jarvis, for the Secretary of State, has conceded that issue. No stay is merited.
18. Accordingly, as evidence is to be led, it is appropriate that this matter be reheard in the First-tier Tribunal, especially given that:
- (i) the judge did not grapple with all the sources of income of which the Appellant could avail himself;
 - (ii) did not draw upon the evidence, which goes much wider than what it recorded in the determination, in the Appellant’s witness statement; and
 - (iii) does not engage with the money trail, and what the relevant households were, and who was living where, and dependent upon income from which source.
19. Accordingly the decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside in terms of Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of Practice Statement 7.2, remitted to the First-tier Tribunal for a fresh hearing before a judge other than First-tier Tribunal Judge Ross.

20. No anonymity direction is made.

Deputy Upper Tribunal Judge Juss

12th February 2018