



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

Appeal Number: EA/05426/2018
EA/05427/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2019**

**Decision & Reasons Promulgated
On 11 June 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mrs Vidhyaben DilipKumar Modi
Mr Dilipkumar Jayantilal Modi
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr E Waheed, counsel instructed by Hamlet Solicitors LLP

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Sweet, promulgated on 6 March 2019. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 10 April 2019.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. On 17 July 2018, the Secretary of State refused to issue residence cards to the respondents as confirmation of a right of residence under European Community law as the dependent direct family members of an EEA national exercising Treaty rights in the United Kingdom. While accepting that the respondents were the parents-in-law of their daughter-in-law who is an EEA national currently exercising Treaty rights in the United Kingdom, the Secretary of State refused the applications because the documents submitted with the application contained no evidence that they were either living with or financially supported by their daughter-in-law.

The hearing before the First-tier Tribunal

4. At the hearing before the First-tier Tribunal, the Secretary of State's representative argued that there was no evidence of financial dependency. The respondent's case was primarily put on the basis that they were living in the same household of the sponsor. The judge found the witnesses to be credible and concluded that the respondents were living with their son and daughter-in-law, the latter being the only person bringing an income into the household.

The grounds of appeal

5. The grounds of appeal argued that the judge failed to make adequate findings of fact and failed to give any adequate reasons for findings on a material matter. In particular, the judge had failed to adequately consider the respondents' circumstances prior to leaving India, there was no consideration of whether they were working or had assets. The respondents had entered the United Kingdom on visit visas and would have had to demonstrate that they intended to return to India. Furthermore, it was argued that the judge failed to consider whether the sponsor could maintain herself, her husband, her son and the respondents from her income. There was no reference to any evidence that the sponsor was able to maintain the household or to her income and expenditure.
6. Permission to appeal was granted on the basis sought.
7. In advance of the hearing, Mr Waheed provided a skeleton argument which objected to the Secretary of State raising the new issue regarding the respondents' circumstances in India in the grounds of appeal to the Upper Tribunal. Furthermore, the skeleton argument emphasised that there had been no challenge to the judge's finding that the respondents resided in the same household as their EEA sponsor daughter-in-law.

The hearing

8. Ms Everett argued that there was inadequate reasoning in relation to demonstrating dependence of the respondents on the sponsor as required. She contended that it was relevant to ask whether the Secretary of State's decision prevented the EEA national from exercising freedom of movement and she asked me to note that in order to be issued with a visit visa, the respondents had to demonstrate they had a life to return to back home.
9. Mr Waheed relied on his skeleton argument. In addition, he emphasised that the decision letter made no mention of the matters raised in the grounds of appeal to the Upper Tribunal regarding the respondents' circumstances in India and nor had the Secretary of State's representative before the First-tier Tribunal raised such issues in his submissions. Mr Waheed argued that the Secretary of State could have applied to amend the decision letter in advance of the hearing but had not done so. As for dependency, the decision letter stated only that the Secretary of State did not accept that the respondents lived with or were dependent on the sponsor. The Secretary of State's grounds of appeal did not challenge the point that the respondents have lived with their sponsor at all material times.
10. Ms Everett responded to Mr Waheed's submissions by accepting that the appeal was prepared to address the issues raised in the decision letter but that a more nuanced approach allowed for the consideration of the respondents' circumstances in India.
11. At the end of the hearing I announced that the decision of the First-tier Tribunal was upheld because there was no challenge to the judge's principal finding, that the respondents are members of the sponsor's household. Furthermore, the matters now relied upon by the Secretary of State were never raised previously either in the decision letter or during the hearing before the First-tier Tribunal.

Decision on error of law

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

Signed

Date 06 June 2019 08 August 2019

Upper Tribunal Judge Kamara