



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

Appeal Number: EA/05894/2016

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice
Centre
On 7th October 2019**

**Decision & Reasons Promulgated
On 15th October 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Tarek Ahmed
(no anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Gill, Gill Law Chambers

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant is a national of Bangladesh born in 1985. He appeals with permission against the decision of the First-tier Tribunal (Judge Monaghan) to dismiss his appeal under the Immigration (European Economic Area) Regulations 2006.
2. The Appellant seeks confirmation of a right of residence under Regulation 8. He claims to be a dependent 'extended' family member of a man named Md Arju Miah, whom he claims to be his uncle. Mr Miah is a national of Portugal who now lives in the United Kingdom.

3. The Respondent refused to grant a residence card. In a decision dated the 3rd May 2016 the Respondent concluded that the Appellant (and his dependent wife and child) had failed to supply sufficient evidence to demonstrate that they were related to Mr Miah as claimed. The Appellant exercised his right of appeal.
4. When the matter came before the First-tier Tribunal (Judge Monaghan) it had regard to the various birth certificates supplied by the Appellant. These showed that the Appellant's grandmother is called Comola Bibi, and his grandfather is called Md Shadir Ullah. Mr Miah's birth certificate indicated that these were also the names of his parents. Directing itself that the claimed dependency was potentially relevant to the issue of relationship the Tribunal had regard to three money transfer receipt showing that Mr Miah sent the Appellant money in 2011, and bank statements showing that Mr Miah had transferred the Appellant money on a number of occasions. Having considered all of that evidence in the round the Tribunal found as follows:
 - a) That in the absence of Mr Miah (who had twice declined to attend a First-tier Tribunal hearing on the grounds that a relative had died in Bangladesh) the Tribunal could not be satisfied that there had been a dependency whilst the Appellant was still in Bangladesh. All of the documents supplied post-dated his move here as a student.
 - b) That there was insufficient evidence to demonstrate a current financial dependency in the United Kingdom. There had in the past been bank transfers etc but nothing post April 2018.
 - c) The claimed relationship was established.
5. On the 30th April 2019 the Appellant obtained permission to appeal to this Tribunal on the ground that there was a procedural unfairness in approach, since the Tribunal found for the Appellant on the one matter in issue (c), and yet dismissed the appeal on matters that were not put to the Appellant or his representatives, namely whether the dependency had been established (a) and (b).
6. I considered these grounds of appeal at a hearing on the 1st July 2019. For the Appellant on that day Ms Mensah of Counsel elaborated on the grounds to point out that the HOPO before the First-tier Tribunal had confirmed that there was only one matter in issue: the claimed dependency. The record of proceedings confirms that this was indeed the case. The HOPO's submissions are recorded in the note as opening "1 issue - relationship between A + EEA national" and continue in that vein. Although it appears that some reference was

made, by the Appellant's counsel, to the evidence of dependency, this was in the context of establishing the relationship. Mr Bates, the Senior Presenting Officer who appeared for the Secretary of State before me, agreed.

7. In my written decision of the 1st July 2019 I reflected the consent between the parties as follows:

“Whilst I am satisfied that as a matter of principle it was open to the First-tier Tribunal to want to satisfy itself that all of the requirements of the Regulations were met, as a matter of fairness it was bound to indicate to the parties that it intended to widen the scope of the appeal, which until that point had been clearly limited to the single issue of whether Mr Miah was actually the Appellant's uncle. For the Secretary of State Mr Bates accepted that this was so.

Ms Mensah's case was that had the Appellant been put on notice that the Tribunal – or indeed the Respondent – wished to investigate the actual dependency he would have provided further and better evidence of that matter. Indeed, submitted Ms Mensah, original documents relating to that dependency had been supplied to the Respondent at the time of the application but had not found their way before the First-tier Tribunal simply because those matters were not in issue.

I am satisfied for the foregoing reasons that a procedural unfairness has arisen and I therefore set the decision of the First-tier Tribunal aside”.

8. I then made the following directions:

- i) The Appellant is within 6 weeks (i.e. by the 12th August 2019) to supply the Respondent with any relevant evidence regarding his past/present dependency upon his uncle Mr Miah;
- ii) The Respondent has 6 weeks thereafter (i.e. by the 30th September 2019) to review that material, and any material already held on file, and issue a decision, either granting a residence card to the Appellant and his family, or by issuing a supplementary refusal letter identifying what aspects of the evidence are considered unsatisfactory.

9. I indicated that if the matter could be disposed of by consent it could remain in the Upper Tribunal. If however there remained a dispute about whether the dependency had been established, the parties

were at liberty to apply for the matter to be remitted to the First-tier Tribunal.

10. The relevant information was duly supplied by the Appellant, in the form of a small bundle containing a 'statutory declaration' by Mr Md Arju Miah, Barclays Bank and RBS account statements relating to the same. The bank statements showed transfers to someone with the name of the Appellant.
11. On the 5th September 2019 the Secretary of State responded. The Secretary of State was not prepared to accept that the new documents established dependency. Several detailed reasons are given but in the proverbial nutshell, the Secretary of State believed the documents to be fake.
12. Before me Mr Gill submitted that there was now a substantial factual dispute, and it was one for which he was unprepared, the Secretary of State's letter of the 5th September 2019 having not reached him until very shortly before this hearing. He requested that I remit the matter to the First-tier Tribunal for that reason. Mr Tan indicated that the Secretary of State had no preference as to where the decision would be remade. In light of my earlier indication, and in light of the fact that the first decision of the First-tier Tribunal has been set aside on ground of fairness, I consider it appropriate that the matter is remitted as requested. The Tribunal will be required to make detailed findings of fact and it is fair that the Appellant be given an opportunity to meet the forensic challenge set out in the Secretary of State's letter of the 5th September 2019.

Decisions

13. The determination of the First-tier Tribunal is set aside for error of law.
14. The decision in the appeal is to be remade in the First-tier Tribunal.
15. There is no order for anonymity.

Upper Tribunal Judge Bruce
7th October

2019