



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/13717/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 April 2019

Decision & Reasons Promulgated
On 3 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

SANDEEP KUMAR
[ANONYMITY DIRECTION NOT MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr R Ahsan, instructed by Raghiv Ahsan Solicitors
For the respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Row promulgated 16.11.17, dismissing his appeal against the decision of the Secretary of State, dated 8.11.16, to refuse his application made on 7.10.16 for an EEA Family Permit to join his father in the UK.
2. First-tier Tribunal Judge Birrell granted permission to appeal on 16.4.19.

Error of Law

3. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
4. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law. Nor is it an error of law for a judge not to have regard to evidence of events arising after the decision or for no account to have been taken of evidence not put before the tribunal. Irrationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because a judge has concluded that the story proffered is untrue. However, if a point of evidence of significance has been ignored or misunderstood, that may be a failure to take into account a material consideration.
5. The application was refused following consideration of regulation 8 of the Immigration (EEA) Regulations 2006, on the basis that the Entry Clearance Officer was not satisfied that the appellant was wholly or mainly financially dependent on his sponsoring father. However, it was accepted that the sponsor regularly remitted money to the appellant and that he lives in a house owned by his father.
6. For the reasons set out in the tribunal's decision, Judge Row was not satisfied that the appellant is financially dependent on the sponsor. In particular, the judge highlighted concerns in respect of the money transfers between [11] and [15].
7. In granting permission to appeal, Judge Birrell considered it arguable that the First-tier Tribunal Judge erred in his assessment of the dependency test when at [9] he asked why a fit and healthy 27 year old would be dependent on his father. Judge Birrell drew attention to Moneke (EEA - OFMS) Nigeria [2011] UKUT 00341 (IAC) and the respondent's own guidance to point out that there is no need to determine the reasons for recourse to the financial support provided by the EEA national sponsor, or to consider whether the appellant is able to support himself by taking up paid employment.
8. Mr Ahsan sought to rely on a 1987 decision of the ECJ on the issue that there is no need to determine the reasons for recourse to financial support. However, Mr Tarlow conceded that point.
9. Mr Ahsan's submissions were to the effect that the alleged error at [9] of the decision affected and infected the rest of the decision and the judge's reasons.
10. It is not clear to me that the judge was in fact relying on the rhetorical question asked at [9] of the decision but the judge also pointed out that the sponsor was unwell, had

not worked for a year and his sole income was Employment and Support Allowance of £73.10. Even though it was not necessary to determine the reasons for dependency, I am satisfied that it was open to the judge to assess the issue of dependency in the light of the circumstances of both the appellant and the sponsor.

11. Further, the real basis for dismissal of the appeal arises from the two matters of concern to the tribunal and it is respect of those matters that the actual findings are made from paragraph [10] onwards of the decision.
12. These are, first, the fact that the latest two money transfers were not from the sponsor at all, but two others. The judge rejected as not credible the explanation that the sponsor had given them the money to send because on each occasion, in July and again in October 2017 he happened to have been ill. Second, the only withdrawal from the appellant's bank account was by cheque made payable to the sponsor's daughter-in-law, which the sponsor said was to settle a bill for decoration of the house. Not a single other withdrawal was made from the appellant's account over a period of two years, whilst at the same time the credit balance of Rs6,000 remained undisturbed.
13. The explanation for this proffered on behalf of the appellant is that the money transfers were made and collected in cash, but the judge found that although there were money transfer documents, there was no evidential trace of what happened to those monies; evidently they were not paid into the bank account, even though the appellant banked one of the money transfers, that which was later withdrawn by cheque for the purpose of settling the claimed decoration bill.
14. Having considered the matter in detail, the judge found that there were sufficient queries about the documentation and evidence as to the money transfers to conclude that the sponsor and the appellant had not been open about the appellant's true financial circumstances. The judge considered the possibility that the money transfers were made to give the impression that the appellant was financially dependent on the sponsor when that was not necessarily the case. The judge concluded on this evidence that the appellant failed to demonstrate that he is financially dependent on the sponsor, even though he lives in the family home owned by the sponsor.
15. I am satisfied that the reasoning of the judge in relation to the money transfers stands independent of the rhetorical question as to why the appellant would be financially dependent on the sponsor. The question was not in fact answered and the findings clearly relate to other issues of concern.
16. The grounds complain that the judge was wrong to give weight to the absence of withdrawals from the account. With respect, the question of weight to be given to evidence is a matter for the judge to assess. I am satisfied it was open to the judge to find that the appellant and the sponsor had not been open about their true financial circumstances and to conclude that the appellant had failed to demonstrate that he was financially dependent on the sponsor. The judge gave cogent reasons why the

evidence in relation to money transfers was unsatisfactory. In the circumstances, the error in [9], if it was an error, in relation to questioning why the appellant would be dependent on the sponsor was not material to the outcome of the appeal. At [15] the judge reminded himself that the burden of proof was on the appellant and found that there were sufficient outstanding queries about the documents relied on by the appellant to doubt the true financial circumstances. For that reason, I find no error of law in the decision of the First-tier Tribunal.

Decision

17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

Signed

DNCW Pickup

Deputy Upper Tribunal Judge Pickup

Dated

1 April 2019

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed

DMU Pickup

Deputy Upper Tribunal Judge Pickup

Dated

1 April 2019