



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: IA/22798/2014

THE IMMIGRATION ACTS

Heard at Field House  
On: 1 April 2016

Decision & Reasons Promulgated  
On: 19 April 2016

Before

UPPER TRIBUNAL JUDGE R CHALKLEY  
DEPUTY UPPER TRIBUNAL JUDGE KAMARA

BETWEEN

MR WASEEM SHEHZAD  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Ranjha, solicitors' clerk, Addison & Khan Solicitors  
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision dated 3 August 2015, of First-tier Tribunal Judge Davey. Permission to appeal was granted by First Tier Tribunal Judge Kelly on 29 December 2015.

## Background

2. The appellant sought a residence card as confirmation of a right to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006, on the basis of his claimed dependency on a Polish national, namely Mrs Randhawa, who is the wife of the appellant's uncle.
3. The respondent, in refusing the said application, commented that the appellant had not provided any evidence to support his claim that he was dependent on Mrs Randhawa immediately prior to coming to the United Kingdom.
4. At the hearing before the First-tier Tribunal Judge, oral evidence was given by Mrs Randhawa as well as the appellant's uncle, Mr Randhawa. The judge concluded that the evidence was that of Mr Randhawa alone providing financial support before the appellant came to the United Kingdom. He accepted that the appellant had been able to demonstrate dependency from the end of 2010 or beginning of 2011, which is around when both he and his uncle arrived in the United Kingdom.
5. The grounds of application argue that the First-tier Tribunal Judge made a mistake of fact in stating that there were no statements from the appellant's uncle and sponsor. Secondly it was said that the judge failed to make any or any adequate credibility findings. Lastly, it was said that the judge erred in that he ignored the evidence of "*various remittances sent to the appellant*" in reaching his conclusion that there was no evidence of material support prior to the appellant entering the United Kingdom.
6. Judge Kelly granted permission on the basis that it was arguable that Judge Davey provided inadequate reasons for finding that the appellant was not financially dependent upon his EEA sponsor prior to entering the United Kingdom. While Judge Kelly noted the lack of an appellant's bundle on the IAC case file, he indicated that all grounds may be argued.
7. The Secretary of State lodged a Rule 24 response on 5 January 2016, opposing the appellant's appeal. In addition, it was suggested that no statement appeared to have been provided by the appellant's uncle or the EEA sponsor and that the grounds appeared to be mere disagreement with the findings.
8. This matter was adjourned by the Upper Tribunal at the appellant's request in advance of a hearing listed for 15 February 2016. It is apparent from the content of Addison & Khan Solicitors letter of 10 February 2016 that further time was needed in order to ascertain what evidence was before Judge Davey.

### The hearing

6. At the hearing before us, Mr Ranjha concentrated on the third ground. We indicated from the outset, that there was still no appellant's bundle on the case file. Albeit there was a loose collection of documents, none of which could be described as a remittance receipt. He initially asserted that there was evidence of remittances sent to the appellant before the judge and that an appellant's bundle had been sent to the First-tier Tribunal in accordance with directions. He showed us a bundle of documents sent under cover of a letter dated 25 February 2016, which included a 22-page bundle, which he said was "*presumably*" before the judge.
7. Following further enquiry by the panel, Mr Ranjha conceded that he could not be sure that the appellant's bundle was in front of Judge Davey and that he could refer us to no evidence to show that the said bundle was received by the First-tier Tribunal. At this stage, Ms Fijiwala indicated that no evidence from the appellant had been served on the respondent (who was not represented before the judge) at any stage. Ultimately, Mr Ranjha accepted that if the appellant's bundle was not before Judge Davey, he could not be expected to consider it.
8. With regard to the first ground, Mr Ranjha rightly accepted that there was no material error in relation to the judge's comment that there were no witness statements, given that he had gone on to consider those witness statements in [7]-[9] of the decision and reasons. Mr Ranha said nothing further regarding the alleged lack of credibility findings.
9. At the end of the hearing we reserved our decision.

### Error of law

10. We find there to be no material error of law in the Judge Davey's decision and therefore dismiss this appeal. Our reasons are as follows.
11. Taking the grounds in order, the judge may have been mistaken at [7] of the decision and reasons in recording that there were no witness statements from the witnesses, however he immediately demonstrates in the following paragraphs that he had considered the witness statements and he quotes extensively from them. Clearly, as recognised by Mr Ranjha, any error is not material.
12. With regard to the second ground, which was not developed by Mr Ranjha, it is obvious from reading the decision as a whole, that the judge accepted the oral and written evidence of the witnesses. The difficulty for the appellant was that the evidence of his witnesses was to the effect that he had been dependent on his uncle prior to his arrival in the United Kingdom and not on the EEA sponsor. Furthermore, the judge provided detailed reasons from [7] to [17] of the decision for concluding that the appellant was not an extended family member under Regulation 8.

13. Lastly, Mr Ranjha accepted that there was no evidence to show that the appellant's bundle of evidence was received by the First-tier Tribunal. Judge Davey cannot, therefore, be criticised for failing to consider evidence never before him.

### Conclusions

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

We uphold the decision of the First-tier Tribunal Judge.

No application for anonymity was made and we saw no reason to make such a direction.

This decision is the decision of us both.

Signed:

Date: 15 April 2016

Deputy Upper Tribunal Judge Kamara