



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

Appeal Number: IA/36376/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 11 January 2016**

**Decision & Reasons Promulgated
On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**NURUL HUDA MOJUMDER
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr Mills a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for an EEA Residence Card as a confirmation of the right to reside in the United Kingdom on 26 August 2014. His appeal against that decision was dismissed by First-tier Tribunal Judge Raikes ("the Judge") following a hearing on 17 April 2015.

2. No one had attended for the Appellant by the time the case was called on to be heard at 11.00. There was no request for the matter to be adjourned. I was satisfied I should proceed to hear the appeal in the absence of anyone for the appellant in accordance with Rule 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008. That is because the Appellant had been given notice of the date time and place of the hearing, there was no good reason not to proceed, and the appeal could be justly determined given the issues.

The relevant Regulations

3. The Immigration (European Economic Area) Regulations 2006 (hereinafter called “the Regulations” or “Regs”) state.

‘8. — “Extended family member”

(1) In these Regulations “*extended family member*” means a person who is not a family member of an EEA national under [regulation 7\(1\)\(a\), \(b\) or \(c\)](#) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—

(a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;

(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or

(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

(3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national his spouse or his civil partner.

(4) A person satisfies the condition in this paragraph if the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national were the EEA national a person present and settled in the United Kingdom.

(5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a

durable relationship with the EEA national.

(6) In these Regulations “*relevant EEA national*” means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).’

Relevant case law

4. Secretary of State for the Home Department v Rahman & Others (Case C-83/11) CJEU (Grand Chamber), states that, among other things, if someone is relying on the prior dependency route, the dependency must have existed at the time that the non-EEA national came to the United Kingdom.
5. Oboh and others v Secretary of State for the Home Department; Halauer v Secretary of State for the Home Department [2013] EWCA Civ 1525 states that Rahman confirmed that the situation of dependence must exist in the country from which the family member concerned came at the time when he applied to join the Union citizen, thus indicating a requirement that the dependency must have existed in another country as well as the host Member State.
6. Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 79 (IAC) guides me to the view that under the Regulation 8 (2), a person can succeed in establishing that he or she is an “extended family member” in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the United Kingdom and in the United Kingdom:
 1. prior dependency and present dependency
 2. prior membership of a household and present membership of a household
 3. prior dependency and present membership of a household
 4. prior membership of a household and present dependency.

The grant of permission

7. Designated Judge Shaerf granted permission to appeal (6 July 2015) only on the ground that;

“... it would appear the Judge failed to take account of Reg. 8(6) of the Regs”.

The Judge’s findings

8. The Judge found as follows;

"[35]...I do not accept that the Appellant was a dependent of the Sponsor prior to coming to the UK on a student visa and whilst there is now evidence of the Sponsor and Appellant living at the same address in the UK and indeed the Sponsor supporting him now, I do not accept that such dependency was in existence prior to his arrival in the UK. He was, on the evidence presented, living with his parents and whilst the Sponsor may have made small periodic payments to both him and his family whilst in Portugal they were not only made via her husband's income rather than hers but were not made to wholly support the Appellant's life as asserted by them. I find that evidence of his dependency on his sister was largely unsupported and significant in its absence."

Submissions

9. The Appellant did not attend the hearing. In the grounds in support of the application for permission to appeal it is said that;

"... the Judge has made a material error by believing that the appellant's sponsor must be at work in the country where she is a national to support her dependent."

10. The Respondent's rule 24 notice stated that;

"... the Judge did not find it credible that the appellant was dependent on his sister prior to entry to the UK, that was a matter of credibility and a matter of fact which can only be usurped on grounds of perversity."

11. Mr Mills submitted that given the authorities including Dauhoo (see above [6] for citation) there was no material error of law.

Discussion

12. Upon reading the Judge's determination and in particular [35] which summarises the evidence heard and findings made, it is clear to me that the Judge made findings open to him that, irrespective of the position now, prior to any of them coming to the United Kingdom, the Appellant was not dependent on his Sponsor or her husband or a member of the same household.

13. I am therefore satisfied that the Judge made no material error of law.

Decision:

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

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
12 January 2016