



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04000/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 8th May 2018

Decision & Reasons Promulgated
On 17th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

SYED ATIF ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Brooks of Counsel instructed by Syeds Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and background

1. The Appellant appeals against a decision of Judge O'Hagan (the judge) of the First-tier Tribunal (the FtT) promulgated on 25th July 2017.
2. The Appellant is a male citizen of Pakistan born 1st January 1985 who applied for a residence card as the family member of his father, an EEA national exercising Treaty Rights in the UK.
3. The application was refused on 30th March 2017 and the reasons for refusal are set out below;

'You have not provided adequate evidence to show that you are the family member of a person exercising Treaty Rights in the UK.

You have failed to provide a valid national passport or national identity card or any other document as evidence of your identity.

You have not therefore provided adequate evidence to show that you are the family member of an EEA national exercising Treaty Rights in the UK'.

4. Following refusal of the application the Appellant appealed to the FtT, and requested that his appeal be decided on the papers without an oral hearing.
5. The judge considered the appeal on 20th July 2017 and was satisfied that the Appellant was related to his father as claimed. However, the judge found that in addition to proving the relationship, the Appellant must prove that he is dependent upon his father. The judge found that the appellant had not provided evidence of dependency and therefore the appeal was dismissed.
6. The Appellant, who was not legally represented, applied for permission to appeal to the Upper Tribunal. In summary, it was contended that the judge had acted unfairly by considering dependency, when this had not been raised as an issue by the Respondent when the application was refused. The Appellant had been given no notice that dependency was to be considered in the appeal.
7. Permission to appeal was granted by Judge Saffer and I set out below, in part, the grant of permission;

'It is arguable that the judge materially erred in finding that the Appellant was not dependent on his EEA Sponsor when this was not challenged by the Respondent and the Appellant was not given the opportunity to deal with this as it was a case dealt with on the papers.'
8. Following the grant of permission, the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
9. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

10. Mr Brooks on behalf of the Appellant relied upon the grounds contained within the application for permission to appeal and the grant of permission. It was submitted that the judge had considered dependency, which had not been raised as an issue in the refusal decision, and that this was unfair without giving notice to the Appellant.
11. Mrs Aboni submitted that the judge had not erred in law, and had made findings open to him. It was submitted that the Appellant should have been aware of what he needed to prove, and should have submitted the necessary evidence with his appeal.

My Conclusions and Reasons

12. In my view the judge erred in law, and I find the error to be material. The judge was correct to realise that dependency needed to be proved. That should have been made clear in the refusal decision, but was not made clear. The reasons given for refusing the application are set out earlier in this decision and make no reference to dependency. The Appellant was unrepresented when he made his application for a residence card.
13. The Appellant addressed the issues raised in the refusal decision in his appeal. He was not given notice that dependency was to be considered by the judge.
14. While the judge was clearly correct to appreciate that dependency needed to be considered, he erred by dealing with the appeal without giving the Appellant notice that dependency was to be considered. I find this to be unfair, and therefore the decision of the FtT is unsafe and must be set aside.
15. The decision needs to be re-made. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and find that it is appropriate to remit this appeal back to the FtT to be decided afresh with no findings preserved.
16. As I announced at the hearing, the appeal will be decided by an FtT Judge, other than Judge O'Hagan, on the papers. If the Appellant requires an oral hearing then he must notify the FtT of this and pay the appropriate fee. For the avoidance of doubt, the FtT should consider the issue of dependency when this issue is heard again, and it is the responsibility of the Appellant to submit evidence if he claims to be dependent upon his father. That evidence must be submitted to the FtT and to the Respondent.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved. This appeal will be decided on the papers unless the Appellant makes an application to the FtT for an oral hearing and pays the appropriate fee.

Anonymity

The FtT made no anonymity direction. There was no application for anonymity made to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date 8th May 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date 8th May 2018

Deputy Upper Tribunal Judge M A Hall