



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

Appeal Number: IA/02651/2014

THE IMMIGRATION ACTS

Heard at Field House

On 7th April 2015

**Decision & Reasons
Promulgated
On 5th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MISS HANOUSHA DEVI NEERPUTH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jaffer (Counsel)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse to issue her with a residence card, as confirmation of a right of residence as the family member of an EEA national, was dismissed by First-tier Tribunal Judge Naphthine ("the judge") in a decision promulgated on 28th November 2014. The appellant is the niece of an Italian national currently present in the United Kingdom, exercising treaty rights. The judge made adverse findings regarding the appellant's claim that she was dependent upon her sponsor while living in Mauritius and while her sponsor was living abroad.

He also found that the evidence did not show that the EEA sponsor was exercising treaty rights as a worker.

2. In an application for permission to appeal, it was contended that the judge erred in several respects. First, in failing to properly assess evidence showing that the sponsor was present here exercising treaty rights, supporting documentary evidence having been provided to the Secretary of State in a bundle of documents served on 7th March 2014, long before the hearing. Secondly, in finding that the appellant was required to show that she joined her sponsor in the United Kingdom after the latter's arrival here, this being contrary to the decision of the Court of Appeal in Aladeselu [2013] EWCA Civ 144. Thirdly, in failing to properly assess the appellant's claim that she was dependent upon her sponsor. The judge failed to properly apply guidance given in Dauhoo [2012] UKUT 79 (IAC). By the time of the application for a residence card, the appellant was residing with her sponsor. With regard to earlier dependency, the judge found that the evidence was insufficient, concluding that it amounted to two money transfers from the sponsor to the appellant, to enable travel to the United Kingdom for the purposes of study. The judge's approach was contrary to Lim [2013] UKUT 00437.
3. Finally, it was contended that the judge erred in holding the appellant's failure to produce her personal bank statements against her, as undermining her credibility. The appellant's personal bank account was not relevant and if the judge had concerns, directions might have been made requiring this evidence.
4. Permission to appeal was granted on 3rd February 2015. The judge granting permission found that it was arguable that the finding regarding the appellant joining her sponsor amounted to an error of law. It was also arguable that the judge's approach to dependency was inconsistent with Lim and that the appellant's failure to produce her personal bank statements ought not properly to have given rise to adverse credibility findings.
5. In a rule 24 response from the Secretary of State, the appeal was opposed. The judge was entitled to find that the sponsor was not present here exercising treaty rights and there appeared to be no challenge in the grounds to this finding, which was sustainable. Overall, the judge was entitled to conclude as he did.

Submissions on Error of Law

6. Mr Jaffer relied upon the grounds. They identified errors of law. First, the judge placed no weight on documents regarding the sponsor's employment. These were ordinary documents, including wage slips and P60s and if the Secretary of State wished to challenge their authenticity, the judge might have made directions accordingly. Secondly, the judge erred in finding that the appellant was required to show that joining her EEA national sponsor required her to be present here first. As a matter of fact, the sponsor arrived in the United Kingdom after the appellant, but the

authorities showed that the requirements of the 2006 Regulations were still met. The Court of Appeal held in Aladeselu that “join” includes “has joined” and that there is no particular temporal dimension. The judge’s reasoning at paragraph 23 of the decision was erroneous and infected his other findings.

7. A challenge was made in the grounds to the judge’s conclusion at paragraph 19 of the decision that dependency was not shown by the money transfers. Dependency while the appellant lived in Mauritius was in issue here. At paragraph 21, the judge found that there was no evidence regarding a claim that the appellant and her sponsor were part of the same household in Mauritius. He found that the claimant was raised by her parents there. It appeared that there was evidence regarding this aspect.
8. The two remittances, made in 2007 and 2008 were sent to meet educational needs and the cost of the appellant’s journey to the United Kingdom for study. The witness statement in the appellant’s bundle at page 4 was evidence in support of this claim and there were Western Union receipts at pages 33 and 34 of that bundle. Reliance was placed upon Lim and the reasoning of the Upper Tribunal in that case.
9. Although the receipts appear to be the only documentary evidence of money transfers, the correct approach was shown in Lebon and required an open interpretation of dependency. The appellant’s need to study was sufficient for these purposes and if the money transfers were necessary to meet that particular need, the requirements of the 2006 Regulations would be met in relation to dependency. Paragraphs 42 and 43 of the judgment in Pedro showed that no particular level of financial support was needed. The appellant came to the United Kingdom in 2008 to study. Her sponsor arrived here in July 2013. The appellant was required to show that she was dependent prior to July 2013.
10. The next challenge concerned paragraph 32 of the decision and the judge’s finding regarding the appellant’s own bank statements. Their absence was no basis for making an adverse credibility finding. The judge’s rejection of the sponsor’s evidence regarding her employment in the United Kingdom perhaps lay at the heart of his reasoning. The documentary evidence included a bank statement going back to January 2012 in the joint names of the appellant and her sponsor and this bore on the issue of prior dependency. If the key was dependency in Mauritius, the judge misunderstood the evidence as the bank statement in 2012 showed the joint names. The appellant was present in the United Kingdom by that time. Paragraph 44 of the judgment in Aladeselu was relevant here. The appellant relied upon the bank statement from 2012 as showing dependency, before the sponsor arrived here from Italy and while the appellant was in the United Kingdom. At paragraph 30 of the decision, the judge referred to a joint account dating from 2013 but bank statements showed balances in a joint account earlier than that, in 2012. Page 45 of the appellant’s bundle included a document dating from August that year. The appellant and her sponsor were living in different countries in 2012,

the former here and the latter in Italy and there was good reason to maintain a joint account. The documents at pages 35 and 35A were relevant to this aspect.

11. Mr Walker said that the major difficulty for the appellant's case were the judge's findings regarding transfers and dependency, for example at paragraph 19 of the decision. There were two payments, the only transfers in the period of some twenty years or so in which the sponsor lived in Italy. Those payments were to enable the appellant to travel to the United Kingdom, pay for her visa and, apparently, to study. They were not related to living expenses. The Secretary of State accepted that the judge erred in paragraph 23 of the decision, regarding the appellant "joining" her sponsor, but this was simply not material. At paragraph 27, the judge found that the sponsor was unable to name the street where the appellant lived, even though that address appeared in the 2012 bank statements. Overall, the judge's findings were open to him and there was a lack of evidence showing any dependency, so that the requirements of the 2006 Regulations were not met.
12. Mr Jaffer had nothing to add to his earlier submissions and relied upon them.

Conclusion on Error of Law

13. I am grateful to Mr Jaffer and Mr Walker for their careful submissions. There is no doubt, in the light of the judgment of the Court of Appeal in Aladeselu [2013] EWCA Civ 14, that the judge erred at paragraph 23 of the decision, in finding that the appellant had failed to show that she "has joined" the EEA national in the United Kingdom, for the purposes of Regulation 8(2)(c) of the 2006 Regulations. The judge made his finding in the light of the appellant's arrival here in 2008, followed by her sponsor in 2013. The Court of Appeal held in Aladeselu that the phrase "has joined" does not of itself impose a temporal limitation. It does not matter whether the appellant or her EEA national sponsor arrived first in the United Kingdom. The critical question, however, is whether a material error of law has been shown, notwithstanding the judge's mistake on this point.
14. Mr Jaffer made a forceful challenge to the judge's finding that no weight could be placed upon documents regarding the sponsor's employment in London, including a P60, payslips and a letter from accountants. At paragraph 26 of the decision, the judge appeared to base his finding on the fact that these documents were not submitted to the Secretary of State for examination or analysis. I find that the judge erred here too. On file was a copy of the appellant's bundle which was sent to the First-tier Tribunal and the Presenting Officers Unit on 7th March 2014, months before the hearing. Pages 10 to 32 of that bundle consisted of payslips, a letter from HM Revenue & Customs, a document from Companies House and a letter confirming the sponsor's employment, all made available to the respondent in sufficient time to enable an assessment to be made. The judge's conclusion that no weight could be given to this evidence was based on a false premise.

15. In the grounds in support of the application, it was contended that the judge erred in finding that the absence of the appellant's personal bank statements undermined her credibility. Whether or not an error of law has been shown, this aspect of the case is peripheral and does not bear directly on the requirements of Regulation 8 of the 2006 Regulations. On balance, I find that no error of law has been shown and that the judge was, having heard evidence from the appellant and from her sponsor, entitled to draw attention to the absence of personal bank statements but, again, the absence does not bear on the critical issue.
16. As Mr Walker submitted, if the judge was entitled to find that the appellant did not meet the requirements of paragraph 8(2)(c) of the 2006 Regulations, the appeal would fall to be dismissed and the error regarding "has joined" would not be material. As is clear from Dauhoo [2012] UKUT 79, the appellant was required to show dependency upon her sponsor or, alternatively, membership of her sponsor's household, prior to arrival in the United Kingdom, in addition to either dependency or household membership in the United Kingdom. The key focus here is on the appellant's circumstances in Mauritius, before she travelled to the United Kingdom in 2008. At paragraph 19 of the decision, the judge found against the appellant in relation to prior dependency, having taken into account two money transfers from the sponsor to the appellant. At paragraph 21, he found against her in relation to prior membership of a household in Mauritius, as there appeared to be no evidence supporting the claim that the sponsor lived in the same household and indeed there appeared to be no evidence showing where the sponsor lived before she moved to Italy some twenty years ago.
17. The grounds in support of the application for permission to appeal contain no challenge to the judge's adverse finding regarding household membership in Mauritius. The author drew attention to the absence of challenge by the respondent to the claim that the appellant and her sponsor were members of the same household, here in the United Kingdom, at the time of application in October 2013 (paragraph 8 of the grounds). This is unsurprising. The appellant's witness statement, made on 12th March 2014, included a claim that the sponsor was paying the appellant's "fees and other living expenses while I was in Mauritius" and that there was dependency at the time the appellant came to the United Kingdom in 2008, the sponsor sending money to pay for the visa application fee, a ticket "and to pay for my living expenses". The statement went on to include a claim that the appellant was "now living" with her sponsor. The sponsor's witness statement, made on 8th March 2014, is in substantially the same terms as the appellant's statement and contains no claim that she and the appellant were part of the same household in Mauritius. She states that the appellant "has been living with her" in the United Kingdom. So far as dependency is concerned, the sponsor's statement includes a claim that dependency at the time the appellant travelled to the United Kingdom "can be demonstrated by the fact that I sent her money to pay her visa application fee and other expenses including her travel ticket and other living expenses".

18. The judge took these witness statements into account, as he did a claim which appears to have been made in oral evidence by the sponsor that she lived in the same household as her niece in Mauritius, who lived with her father and mother.
19. The judge has given sustainable reasons for disbelieving the claim regarding household membership in Mauritius, noting the absence of supporting evidence. Again, the grounds contain no challenge to this finding. So far as dependency is concerned, the judge found as a fact that the financial support given to the appellant by her sponsor while the former was living in Mauritius consisted of the two money transfers. Mr Jaffer drew attention to Lim and Lebon [1987] ECR 2811. Dependency is a question of fact. The Court of Appeal in Pedro [2009] EWCA Civ 1358 referred to guidance from the Commission to the European Parliament on dependency, in the light of Lebon and Jia [2007] OB 545. What must be assessed is whether a person needs material support to meet their essential needs in the country of origin but judgments on the concept of dependency do not refer to any level of standard of living for determining the need for financial support. Taking into account the purpose of the transfers, as found by the judge, I conclude that he was entitled to find that the extent of the support, limited as it was, did not show dependency for the purposes of Regulation 8(2) of the 2006 Regulations. That finding was open to him.
20. In summary, although the judge did err, in relation to the proper construction of the phrase “has joined” in Regulation 8(2) of the 2006 Regulations, and although he may have erred in relation to evidence of the sponsor’s employment in the United Kingdom following her arrival here in 2013, and even if there is some doubt regarding the weight he attached to the absence of personal bank statements in the appellant’s name, none of that is sufficient to show a material error of law. The judge’s findings on household membership and dependency when the appellant lived in Mauritius, before coming here in 2008, are sufficient to justify his overall conclusion that the appeal fell to be dismissed.
21. As the decision of the First-tier Tribunal contains no material error of law, it shall stand.

Notice of Decision

22. The decision of the First-tier Tribunal shall stand.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

There has been no application for anonymity and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell