



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/45546/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14 September 2015

Decision & Reasons Promulgated
On 16 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR DOMINGO JUNIOR BAGUI DALANON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M B Hussain, of Zahra & Co Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of the Philippines born on 16 April 1969 and he made an application on 5 April 2013 for a residence card as an extended family member of an EEA national under Regulation 8(1) of the Immigration (EEA Regulations) 2006. That application was refused on 26 October 2013.
2. The reasons for refusal identified that the appellant had not provided any evidence of dependency on his EEA national sponsor at any time either in the Philippines or in the United Kingdom and that he was not dependent on his EEA sponsor

immediately prior to entering the United Kingdom as required under Regulation 8(2)(a).

3. It was stated that he had failed to provide sufficient evidence that he was dependent upon or residing with his sponsor prior to entering the UK and the appeal was refused.
4. That matter came before First-tier Tribunal Judge Monson on 2 December 2014 and he dismissed the appeal on 16 December 2014 on the basis that the appellant had not proved prior dependence on either his sister or brother-in-law. The appellant came to the UK on 16 October 2008. Secondly, the judge found that it was not satisfactorily demonstrated that the appellant's sister was generating an income in the period running up to November 2008 in which he was able to provide financial support to the family in the Philippines.
5. An application for permission to appeal was made on the basis that the evidence before the First-tier Tribunal showed a series of remittances by the appellant's sister in 2008 and prior to the appellant's arrival in the UK. In total the sum of £8,950 had been remitted to the appellant in 2008 and whilst the judge accepted that a sum of £4,000 was sent in 2005 he failed to accept that a sum of £8,950 remitted in 2008 was a significant sum of money. There was no mention of the total sum and it was unclear whether the judge recognised that this sum was indeed remitted by the appellant's sister.
6. Secondly, it was submitted that it was not clear that the judge considered the remittances made by the appellant's sister in the period of time leading up to the arrival in the UK following Rahman and Others v Secretary of State for the Home Department [2012] EUECJ C-83/11, [2013] 2 WLR 230. This identifies that the period of time to be considered is that shortly before or at the time the appellant arrived in the UK and the judge failed to consider the relevant time of assessment.
7. Thirdly, the judge found there was an inconsistency between the remittance slip provided by CBN Limited, (appellant's bundle [66-68]) and the printout of transactions from CBN Limited (appellant's bundle [78-81]) and found this to be a "highly significant anomaly (determination [29]). However this finding was predicated on the assertion that the printout of transactions listed all transactions between 2005 and 2009. In fact the printout only confirmed transactions from the period December 2008 to February 2009 and the judge erred in concluding that the appellant's bundle [78-81] was a complete document. In fact the printout was on page 78 under a covering letter at page 77. Pages 79-91 related to other records provided by the appellant to support the assertion that had made remittances. It was for that reason that page 78 referred to page 2 of 2.
8. Fourthly the judge found that it was not possible to identify whether the sums sent by the appellant's sister were for the appellant himself or other members of his family. The judge accepted that the sums were remitted to the appellant or the appellant's wife at least implying that they were for the benefit of the appellant and his wife.

9. It was submitted that the judge failed to consider the evidence that the appellant was not working, had no independent source of income and did not have the skills to find a job in the city (determination [10]). In the absence of any independent source of income from either the appellant or his wife with which to support themselves and their three children it was submitted that the judge perversely found that the appellant was not supported by his sister through remittances from the UK. Further, even if some of the remitted sums benefited other family members this alone was insufficient to allow the judge to conclude that the appellant's essential living needs were not met by those remitted sum.
10. Fifthly, the judge considered that the appellant's sister was not earning sufficient sums to make the remittances. The sums must have come from the husband which was, he found not permitted. There was however, no rule of Community law which precluded a relationship of dependence from being established in circumstances where an EEA national and her spouse collated their joint income and used part of their joint income to make remittances to family members abroad.
11. At the hearing before me Ms Isherwood agreed that the Home Office had not contested this last point on funds deriving from the wife or the husband as this was not raised in the reasons for refusal letter and was not relevant.
12. Mr Hussain relied on the written reasons for application for permission to appeal. If the judge was suggesting that pages 66-68 were a fabrication this was not set out and the judge should have taken into account the *context* of the sponsor's evidence. He did not appear to do so. I was referred to paragraph 7 of the witness statement of the sponsor. In effect the judge had failed to take into account the oral evidence.
13. Ms Isherwood stated that the grounds were seeking to re-argue the case and trying to put more weight on evidence presented. The appellant continually made applications in 2007 and at paragraph 19 of the determination it was recorded that the appellant's representative had acknowledged there was a difficulty with the evidence and it was inferential. As the judge recorded the affidavit raised more questions than it answered and the implication from the affidavit of the wife was that the sister-in-law did not send any money to either account between 2006 and 2008. Further paragraph 34 indicated that there was an anomaly whereby prior to October 2008 the purpose of the remittances was designated to savings rather than remittances for "family support". The judge had gone through the evidence and made the appropriate findings.
14. In conclusion the nub of this matter, as the judge identified, was whether the appellant was dependent on his sponsor prior to his arrival in the UK. The challenge rests largely on the judge's treatment of the evidence of support and the remittances made in 2008. The judge accepted that there was dependency by the appellant in the United Kingdom on an EEA national. The critical point is that dependence also needs to be shown before the appellant's arrival in the United Kingdom which was on 16th October 2008. It is said there is an error in paragraphs 27 - 29 of the determination which state that the list of transactions printed out by CBN Grupo on 28 July 2014 at pages 78 to 81 of the appellant's bundle covered all remittances from 2005 to 2009. That, it is said, is not correct as pages 78-81 could not be read all

together because, as indicated, the CBN sender transaction report attached to the letter was marked '2 of 2' indicating that the letter was sent with just one list of transactions and those transactions only referred to December 2008 to February 2009. Page 2, it is said, does not cover all remittances from 2005 to 2009.

15. At paragraph 29 the judge states as follows:

"The printout to which I refer does not tally with the documents at pages 66 to 68 of the bundle, which purport to be copies of six remittances sent to the appellant's wife earlier in 2008. As these copies appear to have been generated retrospectively by CBN London Limited (a division of CBN Grupo) seven days earlier, their absence from the printout is a highly significant anomaly."

The printout to which he is referring would not refer to those remittances because it starts at a later date. There are, however, *two* printouts and it is stated by the appellant that the second printout relates to other records of the sister sending remittances. The problem with the remittance challenge is that *neither* of the printouts provided tallied with the separate remittances sent. There is a further letter dated 21st July from CBN Grupo (p 65 of the bundle) which merely states that there is attached a list of transactions. Following on in the bundle is the set of remittances but these do not appear to have been identified in *any* of the lists of transactions sent.

16. Clearly the appellant asked the bank for print outs of all the payments made and CBN was able to produce a list from 2005 and although the second printout list refers to remittances in 2008 it does not identify the six remittances at pages 66-68 (dated 9/6/2008 (£1,000), 8/5/2008 (£1,000), 7/17/2008 (£1,000), 10/2/2008 (£600), 7/26/2008 (£1,300), 7/29/2008 £1,500)) in the sum of £6,950. Neither list in response to the appellant's enquiries of that bank produced a printout list of these aforementioned remittances.
17. Although, the judge relies on the printout out dated 28th July 2014 which does not, as I state, cover those six remittances, the *second* printout [p 79 -81] does not refer to those six payments made in 2008 either. It could be expected that as the bank could produce a list from 2005 that it would produce a full list with *all* the payments made in 2008. It did not.
18. The judge thus rightly appears to reject the six CBN London Limited printed out remittances to the appellant and his wife.
19. In addition it is asserted that the judge did not take into account the context of the appellant's circumstances before his arrival in the United Kingdom which included his lack of employment. This was underlined in the sister's oral evidence which is recorded at [12] of the decision and which claims that she supported her brother the appellant. The judge rightly notes [35] that the appellant does not have to show that he was either wholly or mainly financially dependent on the sponsor when living in the Philippines. He only needs to show that the sponsor was providing material support to meet his essential needs.

20. The evidence recorded at paragraph 12 of Judge Monson's decision was that the appellant's sister was called and that she gave evidence that she alone was responsible for supporting members of her family in the Philippines and in particular Domingo (the appellant) and the widow and children of her deceased brother Conrad and of course her elderly mother. She gave evidence that Domingo was the "simplest of all her siblings" and had not acquired any educational qualifications which could earn him a living. There was very little employment available in the village where the family home was and that she had wished she had kept receipts of the funds that she had sent over to the Philippines but because of the passage of time it was very difficult to obtain duplicates. The evidence was that she used a variety of companies called Global Express Money Remittance Limited and also Multi Money Transfer. She also used to use the Allied Bank of the Philippines and another company called CBN Grupo who had managed to provide a transaction report to show that she had sent money to Domingo on 15 January 2005. That date is well before the key date of October 2008 and the appellant's arrival. As indicated in the application for permission to appeal the relevant time is that shortly before the appellant's arrival. The judge, as he recorded the evidence, was therefore clearly aware of this information when making his decision.
21. The judge, however, concentrated on the documentary evidence as it was the sponsor's contention that she had transferred money to an account and was clear that he found the documentary evidence contradicted the claims of support. He did not state that it was fabricated but clearly found it unreliable.
22. The judge dealt with the affidavits of M May Dalanon the appellant's wife and his sister Milarosa D Buenaventura at paragraphs [26] and [27] which confirmed that support was given. The judge also dealt clearly with the affidavit of Ms Buenaventura at [27] which merely identifies that the appellant was a beneficiary when he needed support and this does not take the matter much further. It did not indicate a specific time of support.
23. The judge found that the affidavit of the wife did not indicate any support in 2006 but specifically he found at [26] that she did not indicate support received in 2008 despite being the main conduit of receiving remittances. That point further undermines the assertion that remittances were made in 2008 prior to the appellant's arrival.
24. Even if the judge was in error in his findings regarding the six remittances and the failure to identify the correct printout, I find that this is not material for this reason. The wife made a written statement on 26th March 2013 that she had an account with her husband with the Philippine National Bank PNB Balayan Batangas under Savings Account No [] and another account with the Metrobank. The six remittances on which the appellants rely, show payment to the Philippine National Bank in the name of the appellant's wife. She made no statement that she held another account with her husband with the Philippine National Bank and this written statement was given *after* the remittances were said to have been made to her. A copy of that account was produced in the appellant's bundle and which showed that for the year 2008 until November 2008 under 150 PHP was received into that

account. The account evidence does not support the contention that payments were made to the appellant or his wife in 2008 prior to his arrival in the United Kingdom.

25. Although the account of the wife and the appellant are in joint names she states in her affidavit that money was sent to her in 2005 and 2007, she made no mention of 2008 and indeed as I point out financial support is not recorded in 2008 in her account. The accounts with the Philippine National Bank and the Metrobank were, as she stated, held in joint names. It would appear then that the wife's evidence is consistent with the PNB account and with the judge's findings.
26. There was a further amount of £2,000 submitted to the joint account held at Metro Bank for the benefit of the sponsor shortly before his arrival and although it was submitted that this was a sum in excess of that needed for a holiday the judge found clearly at [33] that this, not support, was the purpose of the remittance.
27. The discussion at [30] of the decision is not relevant because this postdates the prior dependency point as it relates to 2010. The critical point is that dependence needs to be shortly before the appellant's arrival in the United Kingdom which in this case was 16th October 2008.
28. The point in relation to the income of the wife and her husband **Zhu and Chen** C-200/02 [2004] ECR 1 9925 and **Commission v Belgium** Case C-408/03 indicates that it is sufficient for nationals of a member State to have the necessary resources and there is no requirement as to the origin of the funds such that the income of a partner could not be excluded. This was not a point taken by the refusal letter and yet was a matter raised by the judge. No Home Office Presenting Officer attended the First tier tribunal hearing. Notwithstanding that, the judge stated at [38] that for the avoidance of doubt his primary finding was that the appellant had not proved support prior to the appellant's arrival. The point of from whom support was derived is therefore redundant.
29. I accept on an overall reading of the decision the judge made a careful and reasoned assessment of the evidence and although noting the evidence of the witnesses he clearly relied on the difficulties with the documentary evidence to dismiss the appeal. He addressed the remittances and considered all the support said to have been made in 2008. He gave reasons for failing to accept the six remittances. This is the key point and grounds 4 and 5 of the challenge really depend on whether there was a finding for support shown in 2008. The judge found there was not. I find that there is no error of law which is material.

Notice of Decision

The First-tier Tribunal made no error of law which would materially affect the outcome and the decision shall stand.

Signed

Date 14th October 2015

Deputy Upper Tribunal Judge Rimington