



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

Appeal Number: EA/06328/2017

THE IMMIGRATION ACTS

**Field House
On 21st January 2019**

**Decision & Reasons Promulgated
On 4th February 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**RAJA TAHIR MAZHAR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Jegede, legal representative from Law Lane Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born on 30th January 1983. He applied for an EEA residence card as an extended family member of an EEA national exercising Treaty rights in the UK. His father's first cousin, Mr Farooq Ahmed, is a Spanish citizen. His first application was made in October 2014, and was refused in January 2015. He appealed that decision but his appeal was dismissed by First-tier Tribunal Judge

Norton-Taylor under the EEA Regulations in a decision promulgated on 13th January 2016. He became appeal rights exhausted in July 2016 with the decision of the First-tier Tribunal being upheld by the Upper Tribunal.

2. He re-applied for a residence card on 30th August 2016, and it is the refusal of this application dated 11th May 2017 which led to the decision of Judge of the First-tier Tribunal Cohen promulgated on 25th June 2018 dismissing the appeal under the EEA Regulations.
3. Permission to appeal against the decision of Judge Cohen was granted by Upper Tribunal Judge Jackson on 29th November 2018 on the basis that it was arguable that the First-tier judge had erred in law in failing to give sufficient reasons for finding the sponsor was currently residing in Pakistan, and in not following the conclusions on the evidence reached by Judge of the First-tier Tribunal Norton-Taylor whilst adopting in full his previous findings.
4. Law Lane Solicitors applied to adjourn the hearing before me on the basis that the appellant was unwell and not fit to attend the hearing on 21st January 2019, however this was refused by Sukhi Bakhshi, lawyer to the Upper Tribunal, on 9th January 2019 as the appellant is represented and the error of law hearing could therefore take place in his absence.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

6. In the grounds of appeal it is firstly argued that the First-tier Tribunal erred in law in not finding that the appellant is currently part of the sponsor's household, at paragraphs 20 and 22 of the decision, when new evidence (not before the previous judge, Judge Norton-Taylor) showed that he was placed on the tenancy agreement in 2015 and there was other correspondence to support this fact.
7. Secondly, it is argued that at paragraph 23 the First-tier Tribunal errs in concluding the sponsor is currently residing in Pakistan, when in fact the evidence before the Tribunal was that he was currently only sorting out an inheritance in Pakistan and then planning to return, and court documents were submitted supporting this fact.
8. Thirdly, it is argued that it was wrong to hold against the credibility of the appellant at paragraph 29 of the decision that he contended that his bank account had been closed due to his immigration status, and that new evidence shows that this was not something within his control. It is argued that this credibility finding was therefore not properly reasoned.
9. Fourthly, it is argued, that it was against the weight of evidence to find that the appellant and sponsor do not currently live together, and that the sponsor does not currently support him as is done at paragraph 30

of the decision. It is quite possible that the sponsor can afford to pay his rent and support the appellant as he has other tenants to assist him paying his rent.

10. I put to Mr Jegede that none of the grounds of appeal challenge the finding of the First-tier Tribunal that there was no prior dependency of the appellant on the sponsor when the appellant lived in Pakistan, and therefore none of the errors set out in the grounds could make any material impact on the outcome of the appeal as prior dependency is an essential element of meeting Regulation 8(2) of the 2016 EEA Regulations. On examination of the bundle there was also no evidence before the First-tier Tribunal that could have changed the conclusions reached by Judge Norton-Taylor on this point, which are set out at paragraph 19 to 21 of his decision, as the only evidence is of financial transfers and Judge Norton-Taylor accepted that money was sent to the appellant's family but found that this was not for the appellant's essential living needs as it was kept for the appellant's overseas studies.
11. There was no Rule 24 notice from the respondent. I did not need to call upon Mr Kotas.

Conclusions - Error of Law

12. The key conclusions of Judge Norton-Taylor in the decision of the First-tier Tribunal promulgated in January 2016, which were the starting point for the current First-tier Tribunal decision, were that the sponsor was at all material times a Spanish citizen and was exercising Treaty rights in the UK. Judge Norton-Taylor also found that the appellant had shown that he was currently living with the sponsor, and the sponsor was providing for part of his essential living needs. However, Judge Norton-Taylor was not satisfied for a number of reasons that the sponsor had lived with the appellant in Pakistan or provided for his essential living needs in that country. The appeal was therefore dismissed as the appellant could not meet the requirements of Regulation 8(2)(a) of the 2006 EEA Regulations. This decision is summarised in the decision of the First-tier Tribunal under challenge at paragraph 3.
13. At paragraph 24 of the current decision of the First-tier Tribunal Judge Cohen deals with whether there is evidence of past dependency, before the appellant entered the UK in May 2011, and concludes that there is not. This is not a finding which is challenged in the grounds, or indeed one that could be challenged as there is no new evidence that the money sent to Pakistan was for the appellant's essential living needs, which is what would be needed to lead to a different outcome from that reached by Judge Norton-Taylor.
14. It follows that any errors of law by Judge Cohen with respect to the position of the appellant and his dependency on the sponsor in the UK; the credibility of the appellant and his ability to hold a bank account; or

whether the sponsor was wrongly found to be currently in Pakistan permanently are immaterial to the outcome of the appeal.

15. It is not therefore appropriate to set aside the decision.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal under the 2016 EEA Regulations.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 21st January 2019