



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

Appeal Number: IA/31870/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 1 November 2019**

**Decision & Reasons Promulgated
On 7 November 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

NAVIKARAN SATHYASEELAN

(anonymity direction not made)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Bellara, of counsel, instructed by Louis Kennedy Solicitors

For the Respondent: Mr. E. Tufan, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Sri Lanka. He first entered the United Kingdom on 6 September 2010, as a student. His leave was subsequently extended in the same capacity until 5 March 2015, but his leave was curtailed on 29 May 2013. He was then refused leave to remain as a student on 14 May 2014.

2. On 27 February 2015 the Appellant applied for a residence card as his EEA national cousin's extended family member. His application was refused on 31 July 2015 and he appealed against this decision. He was granted an extension of time to appeal on 7 December 2015 as he had previously appealed out of time. His appeal was initially listed to be heard on 9 February 2017 but his appeal was stayed after the decision in *Sala (EFMs: Right of Appeal)* [2016] UKUT 00411 (IAC) and was relisted after the Court of Appeal's decision in *Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755.
3. First-tier Tribunal Judge Hodgkinson dismissed the Appellant's appeal in a decision promulgated on 17 July 2019. The Appellant appealed against this decision and First-tier Tribunal Judge Chohan granted him permission to appeal on 19 September 2019.

ERROR OF LAW HEARING

4. Counsel for the Appellant and the Home Office Presenting Officer both made oral submissions and I have taken these into account when reaching my findings below.

ERROR OF LAW DECISION

5. Regulation 8 of the EEA Regulations states:

“8(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 the relative of an EEA national, his spouse or his civil partner and-

(a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;

(b) the person satisfied the condition in paragraph (a), 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 that EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household”.
6. The Appellant’s application was refused on the basis that the Respondent did not accept that the Appellant was related to his sponsor as claimed or that his sponsor was exercising a Treaty right in the United Kingdom. She also stated that the Appellant had not provided any evidence of his dependency on his sponsor prior to arriving in the United Kingdom.
 7. In paragraph 20 of the decision First-tier Tribunal Judge Hodgkinson accepted that the Appellant was related to his sponsor as claimed. In paragraph 22 he also found that the Appellant had established that his sponsor had been exercising a Treaty right in the United Kingdom at the time when the Appellant claimed to be dependent upon him. It was not disputed that the Appellant’s sponsor has been living in the United Kingdom since 2009.
 8. Therefore, the sole issue between the parties, as raised by the Respondent, was whether the Appellant had been dependent upon his sponsor.
 9. It was the Appellant’s case that his father had died in 2003 and then his cousin’s family had provided him and his mother and sister with somewhere to live and financial support. But he added that from 2009, when his sponsor came to the United Kingdom, he had had sole responsibility for the Appellant’s support; initially in Sri Lanka and then here.
 10. At the hearing the Appellant provided the original of his pass book for his personal account with Commercial Bank when he was still living in Sri Lanka between 2009 and 2010 and in paragraph 42 of his decision First-tier Tribunal Judge Hodgkinson noted that the deposits shown in the Appellant’s passbook, as cash deposits, were identical to sums recorded on the Mocha Net Limited money transfer receipts for the same period. The Mocha Net Limited receipts also confirmed that the sponsor was the payee and the Appellant was the recipient. In paragraph 43 of his decision First-tier Tribunal Judge Hodgkinson noted that in the Mocha receipts the section entitled “Receiver Account Details” was marked N/A. However, the receiver’s phone number was recorded and the fact that this was the Appellant’s number has not been challenged by the Respondent. In addition, N/A means “not applicable” and the fact

that the Appellant did not have a “receiver account” does not mean that the money was not transferred to him.

11. In paragraph 43 of his decision the Judge also placed weight on the fact that in the Sponsor’s letter, dated 26 February 2015, he referred to his sponsor making deposits into the Appellant’s account. It is correct that the sponsor had said that the “following deposits were in Commercial bank account were made by myself while he was in Sri Lanka”. However, the meaning of that assertion is arguably open to question and it could mean that the following deposits made by the Appellant were facilitated by the money transferred to the Appellant by the sponsor, as was evidenced by the Pass Book and Mocha Net Limited Receipts. In his witness statement, the Sponsor did refer to his other family members providing the Appellant and his mother and sister with accommodation and support for the Appellant and his sister’s studies when they were young.
12. However, the key question was whether the financial support sent by the sponsor to the Appellant was to provide for his basic needs. In his oral evidence the Appellant said that since 2009 his sponsor had paid his tuition fees and all of his expenses. The Judge did not ask himself this question, despite referring to *Siew Lian Lim v Entry Clearance Officer* [2015] EWCA Civ 1383.
13. In relation to the support provided by the sponsor since 2014, the Sponsor’s Lloyds Bank statements confirmed that he had set up a standing order to pay the Appellant £100 per week; the first payment having been made on 30 October 2014 and the order still being in place on 30 May 2019. As the Appellant is clearly shown as the payee, I find that little weight should have been given to the fact that the Appellant had not also provided bank statements for his own bank account.
14. On the evidence before the Judge his conclusion that these payments were not solely for the Appellant’s use and that the Sponsor could not have afforded to pay him these amounts was pure speculation without further evidence to back up his assertions. It may well be that the Sponsor and the Appellant could have clarified the Sponsor’s financial circumstances but they were never asked to do so.

15. In paragraph 54 of his decision First-tier Tribunal Judge Hodgkinson indicated that certain of the available evidence was contrived and in paragraph 55 he found that” the Respondent had discharged the burden upon him in establishing that the appellant and the sponsor have practiced some deception in seeking to argue the claim dependency”. These were serious allegations which did not correlate with the positive findings of fact which the Judge had made in paragraphs 42 and 48 of his decision.
16. When granting permission to appeal, First-tier Tribunal Judge Chohan found that “it does seem that the judge concluded that the appellant had exercised deception in establishing the claim of dependency, whereas the respondent had not raised such an issue”. I find that the refusal letter had not asserted that the Appellant and the sponsor had attempted to deceive the Respondent and this was not an allegation which was put to them at the appeal hearing. I do not find that the Judge’s remark at paragraph 50 of his decision that the weekly standard order “presented as a contrived dependency, as intimated by [the Home Office Presenting Officer] in his submissions” was sufficient to establish that this allegation had been clearly put.
17. For all of these reasons I find that there were material errors of law in First-tier Tribunal Judge Hodgkinson’s decision.

DECISION

- (1) The Appellant’s appeal is granted.
- (2) First-tier Tribunal Judge Hodgkinson’s decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* re-hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judges Hodgkinson and Chohan.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 1 November 2019