



IAC-HW-AM-V1

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

Appeal Number: IA/10383/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 November 2014**

**Decision & Reasons Promulgated
On 10 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**MUHAMMAD TAHIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed of Counsel

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State is the appellant to this appeal but for the sake of consistency I refer to her as the respondent (as she was in the First-tier Tribunal) and to the original appellant as such.
2. The Secretary of State has appealed, with permission, against the First-tier Tribunal decision of Judge Camp who allowed the appellant's appeal against the respondent's

refusal dated 14 February 2014 to issue him with a residence card as the dependant extended family member of an EEA national under Regulation 8(2) of the Immigration (EEA) Regulations 2006. The original reasons for refusal letter stated that the appellant had not provided any evidence of his dependency on his EEA national sponsor at any time, either in the UK or in another country prior to his entering the UK.

3. The appellant's sponsor is his first cousin, a citizen of the Netherlands, who is said to be exercising treaty rights in the UK. It was not in issue that the appellant was dependent upon his sponsor in the UK. The issue was whether the appellant was supported by the sponsor in Pakistan before he came to the UK as required by Regulation 8(2). The judge noted that it was not suggested that the appellant had ever been a member of the sponsor's household while in Pakistan but the issue is whether he had been a dependent whilst in that country. On that issue the judge found in favour of the appellant and allowed the appeal.
4. In seeking permission to appeal, the respondent argued that "as no documentary evidence whatsoever has been produced to support the claims that the sponsor supported the appellant prior to his arrival in the UK, the appellant has failed to discharge the burden of proof". The judge appears to have accepted the oral evidence of the sponsor and the appellant without more.
5. Permission to appeal was granted on 19 September 2014 by First-tier Tribunal T R P Hollingworth. His reasons for granting permission included the following:

"The reality is there is almost no evidence of substance other than the appellant and the sponsor's oral testimony to verify the issue of out-of-country dependency. The credibility of both is questionable. The determination surprisingly does not make any finding on credibility. According to the appellant, he was involved in not one, but two, businesses in Pakistan. Both of which were unsuccessful. No details of these are provided, not even their names, there is no proof of business capital sent by the sponsor. Admittedly, this is said to be sent via others. But, where the funds originate in the UK is not identified. There is no proof of 'poor profits', financial assistance from the sponsor, the £4,000 said to come from the UK, or proof of 'pressure from lenders'."

6. Submissions were made by both representatives on the question of error of law. Mr Armstrong submitted, relying on the grounds, that no reasons had been given by the judge for his findings that there had been financial evidence of dependency in Pakistan. The burden of proof was on the appellant and, in the absence of documentary evidence, the appellant had failed to discharge the burden of proof on the balance of probabilities.
7. In reply, Mr Ahmed submitted that the judge had provided adequate reasons, that he was entitled to accept the evidence of the sponsor and the appellant and that there had been no error of law. Mr Armstrong, in responding, repeated that there was no documentary evidence whatever that any money had ever been sent by the sponsor

to support the appellant in Pakistan. No bank statements were produced to show the withdrawal of funds nor evidence from any individual who was said to have taken money to Pakistan on behalf of the sponsor.

8. Having considered the submissions and reviewed all the documentary and other evidence that had been before the First-tier Tribunal Judge I am satisfied that the judge erred in accepting the oral evidence of the appellant and the sponsor without any corroborative evidence whatsoever. His error was in failing to acknowledge that the burden of proof rested upon the appellant and that the nature of the claims as to dependency in Pakistan was capable, at least to some extent, of corroborative documentary proof. Of that, there was none whatsoever. The First-tier Tribunal decision must therefore be set aside.
9. Although I was invited to remit the appeal back to the First-tier Tribunal for a rehearing, I have decided that there is more than adequate evidence to enable me to remake the decision.
10. The First-tier Tribunal Judge's decision sets out a summary of the oral evidence at [8]-[12] and I have taken into account the bundle of appellant's evidence that was before the First-tier Tribunal. Although the Sponsor claims to have sent substantial monies to Pakistan and to have set up businesses there in order to support the appellant, there is absolutely no corroborative proof of any of those claims. The burden of proof is on the appellant (and the sponsor) but, other than their oral testimony, which must be regarded as self-serving, there is no other evidence to support the claim.
11. I therefore remake the decision by dismissing the appeal of the appellant Mr Tahir on the basis that I am not satisfied to the required standard, that he was a dependent of the sponsor whilst in Pakistan.

Notice of Decision

12. The First-tier Tribunal determination contained an error of law for the reasons set out above and the determination is accordingly set aside. I remake the decision by dismissing Mr Tahir's appeal.
13. There has been no request for anonymity and no such direction is made.

Deputy Upper Tribunal Judge David Taylor
10 November 2014