



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/02224/2015

THE IMMIGRATION ACTS

Heard at: Field House
on 18 April 2016

Decision and Reasons Promulgated
On 12 May 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

MR ROSHAN LAL
NO ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P Turner, counsel, instructed by M-R Solicitors LLP

For the Respondent: Ms N Wilcocks-Briscoe, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of India, born on 16 March 1979. His appeal against the respondent's decision dated 22 December 2014 refusing his application for a residence card under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") was dismissed by First-tier Tribunal Judge Norton-Taylor in a decision promulgated on 18 September 2015.
2. The Judge found at [22] found that the appellant's evidence did not disclose a clear account of the uncle's money being used for basic living needs such as food, water,

medicine, rent or essential utilities. There was no '... firm evidential platform on which to rest a positive finding of relevant dependency'.

3. In granting him permission to appeal on 3 March 2016 First-tier Tribunal Judge McDade stated that it was arguable that the Judge failed to give any consideration to Article 8 of the ECHR, as Article 8 was raised in the grounds of appeal but appears not to have been dealt with by the Judge.
4. However, as noted by Mr Turner, who did not represent the appellant at the hearing and who was not responsible for drafting the grounds of appeal to the Upper Tribunal, the Judge had in fact expressly considered Article 8 and had found that he had no jurisdiction to consider an Article 8 appeal. The Judge expressly referred to the Upper Tribunal's decision in Amirteymour and Others (EEA Appeals; Human Rights) [2015] UKUT 00466 (IAC), which was upheld by the Court of Appeal in TY (Sri Lanka) v SSHD [2015] EWCA Civ 1233.
5. In dismissing his appeal under the 2006 Regulations, Judge Norton-Taylor found with regard to the requirement of "prior dependency" under the Regulations that the uncle's evidence was not supportive of the appellant's claim. Given that his uncle was the benefactor, he would have expected a clear account of the remitted money being used for essential needs if that had taken place.
6. However, the uncle told him "rather vaguely" that the money was used for "expenditure." When pressed, he later stated that the money was for the purpose only of assisting the appellant to come to the UK. This was clearly stated to be the "one" reason. He again stated that he helped to fund the appellant's studies whilst he was in India. Nothing was said about the essential needs of the appellant or his family in India. There was no evidence to that effect in the uncle's witness statement [23].
7. First-tier Tribunal Judge McDade granted permission to appeal on the basis of the Article 8 ground. There was no ground raised against the explicit findings at [22] and [23].
8. Mr Turner accepted that there needed to be a review of the application for permission. It had not been contended that the Judge failed to give clear reasons for his findings.

Assessment

9. It is not clear why First-tier Tribunal Judge McDade granted the appellant permission to appeal on the basis that the Judge failed to give any consideration to Article 8 of the Human Rights Convention, as the Judge had expressly directed himself at [28] to the Upper Tribunal's decision in that respect.

10. The First-tier Tribunal Judge gave proper reasons for finding that the appellant had not established direct dependency. There has been no contention that his finding at [23] that the appellant's uncle gave him money for the purpose only of assisting the appellant to come to the UK constituted a material error.
11. I accordingly find that the decision of the First-tier Tribunal did not involve the making of any material errors of law.

Notice of Decision

The appellant's appeal is dismissed. The decision of the First-tier Tribunal shall accordingly stand.

No anonymity direction is made.

Signed

Date 7 May 2016

Deputy Upper Tribunal Judge C R Mailer