



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/00725/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 13<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 11<sup>th</sup> October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR ABDIHAKIM NUR MOHAMUD  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appeared in person  
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. In a decision promulgated on 17<sup>th</sup> May 2018, the appellant's appeal against a decision to refuse to issue him with a permanent residence card was dismissed by First-tier Tribunal Judge O'Garro ("the judge"). Having heard evidence from the appellant and his sponsor (his brother) and submissions made by the appellant's representative and a Presenting Officer, the judge found that the appellant had not shown that he fell within regulation 8(2) of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations"), as a dependant of his sponsor. The appellant was required to show household membership or dependency for a period of five years and the judge's assessment of the evidence was that he was unable to make out his case.

2. Permission to appeal was granted by a First-tier Tribunal Judge on 12<sup>th</sup> July 2018. In a rule 24 response from the Secretary of State, dated 4<sup>th</sup> September 2018, the appeal was opposed. The respondent submitted that the judge directed herself appropriately in relation to the test for showing dependency and the conclusion reached that he was not dependent on his EEA national brother was open to her in the light of evidence showing that the appellant earned on average £800 per month. Indeed, it would have been irrational to conclude otherwise.
3. The appellant appeared in person. He was accompanied by his brother and Mr Ahmed Diri was present as the Tribunal's interpreter. I was satisfied that the appellant and Mr Diri understood each other in Somali. I explained Mr Avery's role as the Secretary of State's representative.
4. I explained the procedure to be followed to the appellant, emphasising that the task of the Upper Tribunal was to decide whether the judge's decision contained a legal error. The appellant said that he remembered the hearing and was aware of the decision made by the judge, dismissing his appeal. I summarised the respondent's rule 24 response and the appellant said that he understood it. I reminded the appellant of the written grounds in support of his application for permission to appeal, prepared by a firm of solicitors. The appellant said that he had a copy of those grounds with him and wished to rely upon them.
5. I asked the appellant whether he wished to say more or add to the written grounds. He replied that the rule 24 response was not accurate. It was at the end of 2013 that he moved out of his brother's house. His employment at the time of the Tribunal hearing was not full-time. He spent the past few years working part-time. He now lived again with his brother but at the time of the appeal hearing his brother's friend let him occupy a room and his brother paid the appellant's rent.
6. The appellant said that his income was not enough to meet his needs as he has to pay fees, public transport and so on. He has a girlfriend and they have a son together. His brother has supported him continuously. The appellant's earnings of £800 per month were not enough and he could not pay the rent himself. He lived again with his brother because his job had been terminated. At the time of the judge's decision, he did not have sufficient income and could not pay for accommodation, which was why his brother supported him financially. His brother would put money into his bank account.
7. Mr Avery said that the grounds asserted that the judge had failed to follow guidance given in case law, including Duahoo and Lim. The decision showed, however, that the judge directed herself properly on the case law and the relevant principles. She understood that it was not in issue that the appellant had previously lived with his brother. The issue for decision was whether the appellant could qualify as a dependant. She summarised the judgment in Lim at paragraph 17 of the decision. The question was whether the appellant depended on his brother to meet his essential needs. The factual background in terms of the evidence appeared at paragraphs 18 to 21. The judge assessed the evidence regarding finances and

employment. In 2015 to 2016, the appellant earned £11,443.35 and a P60 for the year ending 5<sup>th</sup> April 2015 showed annual income of £8,340.75. The extent of the support available from the appellant's brother was summarised at paragraph 21. The summary of the evidence was accurate. The appellant said that his income was insufficient but the judge made an assessment which was open to her. The appellant's essential needs were capable of being met from his own income. The decision was soundly made and the legal principles properly applied. The decision should be upheld.

8. The appellant said that his monthly income of £800 at the time was not enough. The house was provided by his brother, who also paid the rent. Without his brother's support he would be unable to live. There was proof in his bank account. The appellant had no money left over and that was why his brother supported him.

### **Findings and Conclusions on Error of Law**

9. As noted above, the task of the Upper Tribunal is a relatively narrow one. I must decide whether the judge made a mistake in law. The appellant described his case in such a way that it is obvious that events have moved on and he is no longer in employment and has returned to live with his brother. Even though there has been a change of circumstances, my focus is on the decision made by the judge.
10. In the written grounds, it was contended that the judge misunderstood the relevance of Lim [2015] EWCA Civ 1383 and that the judgment of the Court of Appeal had no bearing on the appellant's case. This is not so. The judgment contains important guidance relevant to the present appeal. The court held that it is not enough to show that financial support is provided to a claimant by an EEA national. The family member in receipt of the support must need it to meet basic needs. If the family member is able to support himself or herself, there will be no dependency for the purposes of the 2006 Regulations, even though financial support is received from a sponsor.
11. The judge clearly understood this. She also had clearly in mind that as the appellant lived apart from his brother, he had to show that he was dependent upon his brother to meet the requirements of regulation 8 of the 2006 Regulations. It is not correct, as suggested in the grounds, that the judge misunderstood the requirements of the 2006 Regulations.
12. I agree with Mr Avery that the judge summarised the evidence before her accurately and that she was entitled to find as a fact that the appellant had not shown that he was dependent on his sponsor. His basic needs could be met from his net income, shown to be nearly £8,400 in the tax year ending 5<sup>th</sup> April 2015. That finding of fact was open to the judge on the evidence before her.
13. In conclusion, the grounds of appeal are not made out and the appellant has not shown that the judge made an error of law in the decision she made. There is no basis on which to set the decision aside and so it shall stand.

**Notice of Decision**

The decision of the First-tier Tribunal contains no material error of law and shall stand.

Signed

Date 08/10/2018

Deputy Upper Tribunal Judge R C Campbell

**Anonymity**

There has been no application for anonymity at any stage in these proceedings and I make no direction or order on this occasion.

Signed

Date 08/10/2018

Deputy Upper Tribunal Judge RC Campbell