



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/02529/2016
EA/02534/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 March 2018

Decision & Reasons Promulgated
On 9 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTEER

Between

MINE LLESHI
NAZMI LLESHI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Bahja, counsel.

For the Respondent: Mr P Nath, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellants against a decision of the First-tier Tribunal dismissing their appeals against the respondent's decision of 9 February 2016 refusing to grant them EEA family permits as dependent family members of their sponsor, their son-in-law, an EEA national exercising treaty rights in the UK.

Background.

2. The appellants are citizens of Albania born on 2 June 1962 and 1 July 1962 respectively. On 26 January 2016 they applied for a family permit on the basis that they were dependent on their son in law, a Polish citizen, working in the UK and married to their daughter. Their application forms are identically worded, save when referring to matters of personal identity such as name and date of birth. At [65] and [66] of their application they say that they have no savings, property or other income and at [67] in answer to the question of how much they spend each month on living expenses, they reply £75. At [78] they say that they are unemployed and financially dependent on the sponsor and their daughter. At [145] they refer to a previous application which had been refused on the basis that the entry clearance officer believed they were receiving state benefits in Albania. They say they are not sure where the officer obtained this information but, in any event, they have provided additional information to confirm that they are not receiving any such benefits. They repeat that they are not receiving any state benefits, pension or social assistance and that they rely solely on their sponsor to meet their essential living needs.
3. However, their application was refused on the basis that they had provided no evidence to demonstrate the cost of their essential living expenses such as food, utilities, clothing and accommodation and the respondent was not satisfied they were wholly financially dependent on an EEA national in the UK. The decision was upheld on entry clearance review.

The Decision of the First-tier Tribunal.

4. The appeal was determined without a hearing but the judge had written submissions on behalf of the appellants and a large bundle of documents paginated 1-271. The judge was satisfied that the documentary evidence confirmed the relationship between the sponsor, his wife and the appellants and that numerous money transfers dating from 9 January 2011 until 23 September 2016 had been made virtually on a monthly basis, and sometimes with more than one transfer a month, in sums ranging between £90 and £900 but the majority of the transfers appeared to be between £190 and £300. The judge identified as the only issue in the appeal as that of dependency. He referred to Jia v Migrationsverket (C-1/05), judgment of 9 January 2007, CJEC, as authority that it was not necessary for the appellants to show that they were wholly dependent on the sponsor, but the correct approach was whether having regard to their social and financial conditions, they were not in a position to support themselves.
5. The judge said that even applying the test of mere financial dependency there was no evidence other than the statements by the appellants in their application forms that they were unemployed. They had provided no evidence in relation to the status of their residence or their state of unemployment in Albania. He appreciated that this requirement was not readily obvious from the application form, but the appellants

had had the opportunity of providing this information and had failed to do so. On the totality of the evidence and bearing in mind that the burden of proof lay on the appellants, he found that the respondent's decision was in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) and that the appellants could not meet the requirements of article 8 within the Immigration Rules or exceptionally outside those Rules.

The Grounds of Appeal.

6. In the grounds of appeal, it is argued that the judge failed to apply the correct test on dependency. He had referred to [37] of Jia whereas he should have referred to [43]. It is further argued that the judge failed to address the issue of dependency in the context of EU law and that he was wrong to find that there was no evidence other than the appellants' statements in their application forms that they were unemployed. There was evidence in the documents particularly at [60]-[77] to support their assertions that they were unemployed and not in receipt of any state benefit.
7. When granting permission to appeal UTJ Blum said that the provisions of [37] in Jia were not materially different from the test articulated at [45], namely that the person claiming to be dependent had to show that they needed the material support of the community national or his or her spouse to meet their essential needs. However, it was arguable that the judge had failed to consider material evidence at pages 61, 64, 67 and 70-78 in the bundle supporting their claim that they were not employed and received no other income. Had that evidence been considered, it might have altered the judge's conclusion.
8. Mr Bahja adopted his grounds and submitted that the documents in the bundle before the First-tier Tribunal provided confirmation of the claims the appellants had made. The judge had overlooked this evidence and in consequence had failed to take relevant evidence into account. Mr Nath submitted that the judge had not erred in law. The fact remained that there were no adequate details of the appellants' living expenses. The burden was on them to prove their case and the judge had explained why they had failed to do so. The issue of their living expenses had been raised in the respondent's decision but had not been further addressed in the evidence submitted to the First-tier Tribunal.

The Error of Law.

9. I must consider whether the judge erred in law such that the decision should be set aside. In [13] he said that there was no evidence from the appellants apart from their statements in the application form that they were unemployed and they had provided no evidence regarding the status of their residence and their state of unemployment in Albania. In fact, there was documentary evidence capable of confirming that the first appellant was not receiving social assistance in Albania at [70] and was not in receipt of a pension at [67] and similarly for the second appellant

at [61] and [64]. There was evidence that the appellants were registered with the Regional Directorate of National Employment Service, Tirana, as unemployed jobseekers at [77] for the first appellant and [74] for the second appellant. There was, therefore, evidence other than in their written statements to confirm that they were unemployed and not in receipt of state benefits. Their lack of pension and social assistance and their unemployment was clearly of direct relevance to whether they were dependent on the sponsor and it follows that when considering this issue, the judge left relevant evidence out of account capable of confirming their statements and thereby erred in law. I am satisfied that the error is such that the decision should be set aside.

Re-making the Decision.

10. Both representatives agreed that if the decision was set aside, the proper course would be for me to re-make the decision. Neither sought to make any further submissions in addition to those already made.
11. There is no dispute that the appellants have been receiving consistent financial support from the sponsor and their daughter in the UK. The issue is whether they can show that they are dependants within the provisions of reg. 7 of the 2006 Regulations. In their application forms both appellants said that they were unemployed, not in receipt of a pension or state benefits and had no savings, property or other income. There had been a previous adverse decision when the entry clearance officer had raised the issue of whether they were in receipt of state benefit in Albania. That issue was addressed at [145] of the application form. The appellants have produced documentary evidence referred to above from the relevant authorities in Albania, translated into English by a public notary, that they receive no economic assistance, are not receiving a pension and are unemployed. There is no adequate basis in the evidence before me to raise any concern about whether the documents are genuine and on the balance of probabilities I accept that they are genuine and reliable documents.
12. The only evidence as to the appellants' living costs is at [67] where they say they spend £75 a month. It would have been helpful to have more precise details about their living expenses, but I accept that they are unemployed, not in receipt of any pension or state benefit in Albania and they have no other source of income apart from the sums received from the sponsor. The judge accepted that regular payments have been sent from January 2011 onwards in varying sums, the majority being between £190-£300. The most likely explanation for such regular transfers is to provide support for the appellants. In the light of the finding that they are unemployed and otherwise without income, I am satisfied that they have been looking to the sponsor and their daughter for support to meet their essential needs. I find that the appellants have been receiving and continue to receive financial support from the sponsor and have shown that they are dependent on him and are entitled to family permits.

Decision.

13. The First-tier Tribunal erred in law and the decision is set aside. I re-make the decision and allow the appeal against the refusal of family permits.

Signed: H J E Latter

Dated: 9 March 2018

Deputy Upper Tribunal Judge Latter