



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/03316/2015

THE IMMIGRATION ACT

Heard at Field House

Decision & Reasons Promulgated

On 29th January 2018

On 06th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Alam Md Zahangir

(No anonymity direction made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No attendance

For the Respondent : Ms Isherwood Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Alam Md Zahangir date of birth 29 October 1983, is a citizen of Bangladesh. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.
2. There was no attendance by anyone on behalf of the appellant. Notice of hearing had been sent out on 29 December 2017 both to the appellant at the address he had given for service and to his representatives. There is a letter from the appellant's representatives

indicating that they will not be attending because of financial constraints.

3. According to the file on 4 January 2018 notice and directions had been sent out by the Upper Tribunal, indicating that the Upper Tribunal did not have a copy of the complete Home Office bundle. It was directed that the parties must file with the Tribunal and serve upon all other parties any documents upon which reliance was placed, even if that material had previously been served.
4. The appellant's representatives appear to have responded by letter dated 9 January 2018 submitting merely a copy of the Home Office bundle, which included the original application and the documents submitted in support thereof. No other documents had been served by the appellant. No appellant's bundle had been served on the First-tier Tribunal.
5. The representative for the respondent asked that the appeal be adjourned pending further consideration of the legal issues raised in the case and similar cases by the Supreme Court. I refused the application to adjourn.
6. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Kaler promulgated on the 28th March 2017. The appellant had made an application for an EEA residence card as an extended family member of an EEA national, who was exercising treaty rights in the United Kingdom. I note that the application had to be considered under the Immigration (EEA) Regulations 2006. The application was refused by the respondent by decision dated 18 November 2015. The appellant sought to appeal against the decision.
7. The appeal came before Judge Kaler on the 20th March 2017. The judge dismissed the appeal in accordance with the law as stated in the case of Sala (EFMs: Rights of Appeal) [2016] UKUT 00411. The case of Sala has been overruled in the case of Khan [2017] EWCA Civ 1755. The First-tier Tribunal Judge in following the case of Sala cannot be criticised as he was following the guidance set down by the Upper Tribunal. However in light of the case law the approach of the judge was legally flawed.
8. In the circumstances the decision to dismiss the appeal for want of jurisdiction cannot stand. I therefore set the decision aside.
9. The directions sent out to the parties in the present proceedings included the following direction:-
 - 4 *There is a presumption that, in the event of the Tribunal deciding that the decision of the FtT (First-tier Tribunal) is to be set aside as erroneous in law, the remaking of the decision will take place at the same hearing. The fresh decision will normally be based on the evidence before the FtT and any further*

evidence admitted (see [5] below), together with the parties' arguments. The parties must be prepared accordingly in every case.

5 The Tribunal is empowered to permit new or further evidence to be admitted in the remaking of the decision. In any case where this facility is sought the parties must comply with Rule 15 (2A) which is in these terms...

10. The provisions of rule 15(2A) are set out. Other than submitting the original Home Office bundle including the documents originally submitted with the application, no further documentation has been submitted to the Tribunal. In that original bundle are:-
- the application form ,
 - extracts from the appellant's passport,
 - a copy of the appellant's original visa granting entry as the Tier 4 student,
 - an identity card for a person named as Ashiqur Rahman identifying him as a Portuguese national and giving his parents as Golenur Rahman and Fatema Khatun,
 - photo copy of the extension of the student visa for Md Zahangir Alam to 2015,
 - a birth certificate for the Md Zahangir Alam identifying his parents as Md Shahjaman Ali and Mst Nekjahan Begum,
 - birth certificate for Mst Nekjahan Begum,
 - birth certificate for Ashiqur Rahman, with parents identified as above,
 - money receipts where the receiver of the payment was Sultana Rahman.
11. No statement has been submitted from the appellant or from his sponsor. The letter from the appellant's representatives claims that:
- i) The application was refused on the ground that the appellant did not provide sufficient evidence of the relationship with the sponsor.
 - ii) The issue is whether the appellant was dependent on the sponsor.
 - iii) There is no dispute that the sponsor is the maternal cousin of the appellant.
 - iv) The appellant has provided sufficient evidence of his dependency/living together with his EEA national sponsor, i.e. joint bank statement issued to both the appellant and the sponsor which were dated back from June 2016, money transfer receipts, sponsors payslips, a letter from the sponsor diagram of

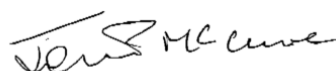
the family tree, which were sufficient to establish evidence of living together or dependency on his EEA sponsor such that the appellant satisfies the requirements of Regulation 8 (1) of the EEA Regulations 2006.

- v) The appellant is fully dependent and living with his EEA sponsor. The appellant's EEA sponsor wrote a letter in support of his application in which the sponsor confirmed that he is providing the appellant's living costs and his support will be continued in future.
 - vi) Unfortunately, the FTT did not make any findings on the grounds of the refusal. The best course of action could be to remit the appeal back to the FTT to make a decision upon considering all the evidence.
12. The problems with regard to the assertions in the letter from the appellant's representative is that in certain respects they are wrong. A careful examination of the refusal letter sets out the reasons why the application was refused and the lack of documentation to support aspects of the case. The relationship of the appellant to the sponsor is not accepted. Contrary to the assertion in the letter no family tree has been submitted. In any event a family tree is merely an assertion of a relationship.
13. Having set the decision aside there is an issue as to whether or not I should deal with the appeal on the basis of the evidence lodged. Clearly this appeal like many others concerning the same issue have been remitted by the Upper Tribunal to be heard afresh as there has been no assessment of the evidence and no proper findings of fact made.
14. Whilst the evidence at the moment is insufficient to meet the requirements of Regulation 8, specifically regulation 8(2), it is a situation in which the appellant ought to be given an opportunity of properly presenting the evidence in the case. It is necessary for the appellant to submit a full bundle of documents answering the issues that are raised in the letter of refusal. In the circumstances the appropriate course is for this matter to be remitted to the First-tier Tribunal for a hearing afresh on all issues.

Notice of Decision

15. I set aside the original decision of the First-tier Tribunal and direct that the case be remitted to the First-tier Tribunal the hearing afresh.
16. I do not make an anonymity direction.

Signed



Deputy Upper Tribunal Judge McClure

Date 29th January 2018