



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/13241/2016

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons Promulgated

On 11 July 2018

On 13 July 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

HAFIZ MUHAMMAD ABDUL RAUF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: No appearance

For the respondent: Mr D. Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 22 October 2016 to refuse to issue a residence card recognising a right of residence as the extended family member of an EEA national. The respondent was not satisfied that the appellant had produced

evidence of his dependency on the EEA national sponsor prior to entering the UK or in the UK.

2. The appeal was initially declared invalid but was then reinstated. It came before Judge H. Graves ("the judge") on 06 March 2018. There was no appearance by either party. The judge noted that the appellant made an adjournment request in a letter dated 05 March 2018. However, the letter was only sent to the Tribunal by fax at 9.04hrs on the morning of the hearing. The adjournment request was made in the following terms:

"I am writing to request you to adjourn my hearing due to emergency. My EEA national sponsor have to travel to Pakistan for 6 days to see his brother Sikandar Khan who is serious ill. The doctors told that he may not survive. My EEA sponsor uncle have to travel to Pakistan, as it is not possible to hold the funeral in Pakistan and it is ritual that they do not funeral straight away.

..... I am writing to request to adjourn my hearing due to this emergency. My EEA national sponsor have to fly today on 05/03/2018 and he will be back on 11/03/2018. He said that he can not regret for his whole life for not seeing his brother in this conditions when his brother especially requested him to come and see him last time.

I am really sorry that I am unable to attend the hearing. My hearing is on Tuesday, 06/03/2018 at IAC Hatton Cross, York House, 2/3 Dukes Green Avenue, Feltham, Middlesex, TW14 0LS. I would humbly request to the Honourable Judge to adjourn the hearing and give me and my EEA national sponsor a chance to explain about my immigration hearing as a matter of fairness. I am also enclosing air travel ticket for this purpose."

3. The judge decided to proceed to determine the appeal and gave the following reasons for doing so.

"12. There was also no attendance by the Appellant or by any representative on his behalf. On the morning of the hearing, at 9.03, a fax was sent to the court by the Appellant, in which he applied for an adjournment. He said that Mr Khan had to travel to Pakistan for six days to attend a funeral, for a relative, Mr Sikander Khan, who was seriously ill. It was not explained what the illness was. The Appellant provided a copy of an e-ticket, purportedly in the name of Mr Khan, for flights to Pakistan for 5 March 2018. I have considered whether to adjourn the appeal to allow the Sponsor to attend, but have decided to proceed. The Sponsor has already provided his financial documents and witness statement. I find the appeal can be justly determined on the papers, because the Appellant's case is set out in full in his bundle and I already have the documentary evidence relied upon, in accordance with the overriding objective and the Procedure Rules. This is the Appellant's appeal and he has not addressed why he is unable to attend, and did not attend court to apply for an adjournment in person. That is a matter for him, but I find he has not given a reasonable explanation for his failure to attend court."

4. The judge went on to consider the evidence contained in the appellant's bundle, which was received at the Tribunal on 05 March 2018. The judge was not satisfied that the evidence showed that the appellant was related to the EEA sponsor as claimed and gave reasons for placing little weight on the various documents produced by the appellant [23-28]. She noted that the appellant had decided not to attend the hearing to give oral evidence or to allow his evidence to be tested. She went on to say:

“regardless of whether or not the Sponsor is in the country, the Appellant has not given any explanation for his own non-attendance.” [28].

5. The judge went on to consider the other evidence produced by the appellant, which included money transfers from Spain, which covered a period from 08 August 2005 to 30 March 2014. She noted that transfers were made from the EEA sponsor to Mr Sikander Khan, who the appellant claimed to live with between 2000 and 2010, but was not satisfied that the evidence showed on the balance of probabilities that the financial support was provided for the appellant. She also noted that the transfers to Mr Sikander Khan continued for a period of years after the appellant arrived in the UK. In the absence of any consistent or credible evidence from the appellant to explain the concerns that she had about the evidence, she was not prepared to accept them at “face value” [29].
6. The judge then turned to the evidence produced by the appellant to show dependency in the UK. She noted that the tenancy agreement suggested that the appellant and the EEA sponsor rented one bedroom in a two-bedroom property where they claimed to live with the landlord. There was no evidence to show these living arrangements continued after May 2017. She took into account the evidence relating to the EEA sponsor’s claimed employment in the UK, but noted that there was no evidence post-dating March 2017. She noted that the sponsor had registered as self-employed but the sponsor’s statement did not say what work he was currently doing in the UK [31]. The judge took into account bank statements, which she accepted showed that the sponsor had made transfers to the appellant’s account up to March 2017. She noted the sponsor’s apparent income, which was reflected in cash deposits each month. She was concerned that the level of income, minus the rent paid on the property, would mean that the sponsor could not in fact afford to support the appellant to the extent claimed. She was concerned “that these transfers may be contrived, rather than real financial support, in the absence of reliable evidence or information from the appellant.” She also observed that the appellant appeared to have another bank account that he transferred money into, but copies of those statements were not included in the evidence [31]. The judge was not satisfied that the evidence showed that the appellant was dependent upon the EEA sponsor prior to entering the UK or that the evidence relating to claimed dependency in the UK showed a complete picture of the appellant’s financial situation.
7. The appellant appeals the First-tier Tribunal decision on the following grounds:
 - (i) It was unfair not to adjourn the hearing in order to allow the appellant and the EEA sponsor to attend to give evidence.
 - (ii) It would have been possible for the appellant to explain any concerns the judge might have had about the evidence.
 - (iii) The evidence showed that the appellant was dependent on the EEA sponsor prior to entering the UK and in the UK.

Decision and reasons

8. There was no appearance by or on behalf of the appellant at the Upper Tribunal hearing. There was no evidence of an adjournment application or that a message had been left to explain his absence. I was satisfied that the appellant had been sent a hearing notice to the last known address given by him when he lodged the application to appeal. The hearing notice was sent on 13 June 2016. It is likely that the appellant had notice of the hearing in good time. I was satisfied that the appellant had failed to give any explanation for his absence and that I could proceed to determine the appeal.
9. The crux of the appellant's appeal depends on whether the judge's decision to refuse to adjourn the hearing was procedurally unfair. The appellant sent the adjournment request only an hour before the hearing. Even if the family emergency only occurred a day or two before the hearing, and the EEA sponsor had to travel to Pakistan at short notice, it was open to the judge to take into account the fact that the appellant was still in the UK. While there was evidence to indicate that the appellant had prepared evidence in support of the appeal, which supports his claim that he intended to pursue the appeal, it was open to the judge to consider the fact that the appellant did not attend the hearing, even though it would have been possible for him to do so.
10. No further evidence has been produced to support the appellant's claim in the grounds of appeal, that he was too upset to attend the hearing because of the recent family bereavement. The First-tier Tribunal judge noted that there was no evidence to support the claim that a family member was seriously ill. The appellant provided no reason for his non-attendance at the hearing today. The standard directions given by the Tribunal instructs appellants to be ready to proceed to a hearing if the First-tier Tribunal decision is set aside due to an error of law. No explanation has been given for the appellant's non-attendance or the failure of the EEA sponsor to attend with him.
11. The rest of the grounds of appeal amount to submissions and responses to the judge's findings without particularising any errors of law. The appellant asserts that he would have been able to provide adequate responses to the concerns that the judge had about the evidence produced in support of the appeal. However, the success of those further points goes back to whether the judge unfairly refused an adjournment request thereby depriving the appellant of the opportunity to respond. I am satisfied that the judge did not act unfairly in deciding to proceed with the appeal. The adjournment application failed to give any good reason why the appellant did not attend the hearing even if the EEA sponsor was unable to attend. No further evidence has been produced to support the *ex post facto* explanation provided in the grounds. The appellant did not attend the hearing in the Upper Tribunal, again, with no explanation. It is open to the appellant to produce further and better evidence in support of a fresh application for a residence card. In such circumstances, I cannot see that the refusal to adjourn the hearing in the absence of good reasons for doing so, caused the appellant any material unfairness.

12. It is understandable that the appellant disagrees with the decision, but the judge's findings were open to her to make on the evidence in the unexplained absence of the appellant. Even if the evidence was taken at its highest, there was a lack of recent evidence at the date of the hearing to show that the appellant was dependent on the EEA sponsor or was a member of his household in the UK.
13. For these reasons I conclude that the First-tier Tribunal decision did not involve the making of a material error of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

Signed  Date 11 July 2018
Upper Tribunal Judge Canavan