



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/01064/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated
On 11 April 2019**

Reasons

On 09 April 2019

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

HODO [A]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M. Afzal of Global Migration Solutions UK LTD
For the respondent: Mr S. Kotas, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 09 January 2018 to refuse to issue a residence card recognising a right of residence as a dependent direct relative of an EEA national in the ascending line.
2. First-tier Tribunal Judge Grimmett ("the judge") dismissed the appeal in a decision promulgated on 01 August 2018. The judge was not satisfied that

the appellant produced sufficient evidence to show that she was dependent on the EEA national for her essential needs as claimed.

3. The appellant appeals the First-tier Tribunal decision on the following grounds:
 - (i) The judge failed to take into account or make findings on relevant matters including (i) additional family income in the form of work and child tax credits; (ii) whether the appellant was a member of the EEA sponsor's household given that she was 67 years old, did not speak English, was unlikely to be working and entered the UK with a valid family permit as a dependent relative; (iii) if she was a member of the household, whether it was likely that she was dependent on her son in law and daughter for her essential needs despite apparent discrepancies in the evidence as to how much money he provided to her.
 - (ii) The judge failed to ensure that the discrepancies were put to the witnesses to provide an explanation if this was a matter that she was going to place weight on.

Decision and reasons

4. Having considered the grounds of appeal and the submissions made by both parties I conclude that the First-tier Tribunal decision involved the making of an error of law and must be set aside.
5. It is axiomatic that a judge must give reasons for his or her decision. It is not necessary for a judge to deal with every aspect of a case if sufficient reasons are given for the parties, particularly the losing party, to understand the basis of the decision in respect of the key elements that need to be determined: see *MK (duty to give reasons) Pakistan* [2013] UKUT 00641.
6. The judge's reasoning was contained in four paragraphs of a brief decision involving text of less than two pages. Brevity is not a problem unless the reasoning is insufficient to the extent that it breaches the duty to give adequate reasons.
7. The judge focussed on the lack of direct documentary evidence of dependency without making any clear findings on the credibility of the witnesses [2]. The judge noted that there was one letter from the NHS that showed that the appellant was likely to live at the same address in 2017 but made no clear finding as to whether she was likely to be a member of the EEA sponsor's household at the date of the hearing. If she was a member of the household it would be a relevant to the assessment of whether she was still dependent on the EEA sponsor for her essential needs.

8. The appellant was granted entry on a family permit. An Entry Clearance Officer must have been satisfied that the appellant was a dependent of an EEA national to issue the family permit. The judge failed to take this relevant information into account. The appellant said that she lived with her daughter and son in law since her arrival in the UK. The appellant was a 67-year-old Somali woman does not speak English and is highly unlikely to be in work. The judge did not consider whether, in the circumstances, it was reasonable to expect there to be any documentary evidence of money transfers between the EEA sponsor and the appellant given that the sponsor plausibly stated that he earns most of his income in cash from his work as a taxi driver.
9. The judge did not make any clear findings as to what weight she gave to the evidence of the witnesses, which included the appellant, her son in law and her daughter. It was open to her to consider apparent discrepancies between the amounts the appellant claimed that she received from her son in law and the amount he stated. However, because of the brevity of the decision it is not clear whether the judge ensured that the discrepancies that she was concerned about were put to the witnesses to clarify or explain. The discrepancy in the appellant's oral evidence should have been obvious before her son in law gave evidence because it conflicted with the evidence given by all three witnesses in their witness statements. It is unclear from the decision whether the evidence given by the appellant's son in law and her daughter were broadly consistent or whether the judge found them to be credible witnesses.
10. Although the judge mentioned that the EEA sponsor was in receipt of additional government support because he is on a low income, no findings were made as to what impact this additional support might have on his ability to support the appellant. Clearly the judge was concerned that the sponsor might not be able to afford to support the appellant given his low income, but there was no analysis of what the appellant's essential living needs might be if she lives within the family household. The additional cost of supporting one other person in an existing household it likely to be modest given that it would only amount to the cost of food and other relatively minor costs for clothing and personal items.
11. Having considered the decision in detail, I conclude that the First-tier Tribunal reasons did not deal with several key elements of the evidence and were sufficiently lacking to amount to an error of law.
12. I considered whether it would be possible to remake the decision at the hearing before the Upper Tribunal. However, it seems clear that the appellant's case relies largely on the evidence of the witnesses given that they accept that there is little direct documentary evidence of money transfers. There is a reasonable explanation for this, but it is still necessary to make proper findings relating to the credibility of the witnesses.

13. If it is accepted that the appellant lives with her daughter and son in law it is more likely than not that they would be providing for her essential needs to the extent necessary to establish a continued right of residence as a dependent family member in the ascending line. However, a clear finding will need to be made as to whether the appellant is likely to be living with her daughter and her husband.
14. Unfortunately, no interpreter was available at the hearing for me to speak to the witnesses to assess their evidence. I considered whether it might be possible to determine the appeal fairly by hearing solely from the appellant's son in law, who appeared to be fairly confident in English. However, given the discrepancies in the appellant's evidence noted by the First-tier Tribunal judge it seemed apparent that any judicial decision maker would need to hear from the appellant as well to make a proper assessment. Following a discussion about the difficulties of travelling back to London for a further hearing, I reluctantly decided that the fairest and most effective way to deal with the matter would be to remit the appeal back to the First-tier Tribunal in Birmingham where a fresh hearing can take place with the assistance of an interpreter.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 09 April 2019
Upper Tribunal Judge Canavan