Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/06617/2018
EA/06618/2018
EA/06621/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 10 September 2019	**On 9 October 2019**

Before

UPPER TRIBUNALJUDGE PLIMMER
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MISS RABAB ZAHRA
MR SYED HASSAN RAZA
MR MAQSOOD RAZA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms Hashmi, Mamoon Solicitors
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellants have appealed against a decision of the First-tier Tribunal ('FtT') sent on 2 May 2019, in which their appeals were dismissed on EEA grounds.

The three appellants are all the adult children of the sponsor, who is an EEA citizen. They entered the United Kingdom in December 2017, having been granted family permits, due to expire on 21 May 2018. Having been granted family permits, it is clear that the respondent accepted at that time that the appellants were related as claimed to the sponsor and were also financially dependent upon him. They therefore met the relevant requirements to be considered a family member for the purposes of the Immigration (European Economic Area) Regulations 2016 ('The 2016 Regs').

The appellants made applications for residence cards prior to the expiry of their family permits on 27 April 2018. These applications were refused in a single decision dated 15 July 2018. The respondent noted that the appellants had been granted entry clearance as the family members of an EEA national and that they had provided birth certificates to confirm their relationships and therefore accepted that the relationship was as claimed.

The respondent, however, refused the applications for the sole reason that the appellants were not at the time of the decision dependent upon the sponsor. It is this decision that was appealed to the FtT. The FtT noted that the sole issue before it was financial dependence. The FtT also observed that there was a surprising dearth of evidence in relation to the alleged residence of the three appellants at the sponsor's home address, bearing in mind that they had supposed to have lived there for well over a year - see paragraph 4 of the decision.

The FtT then came to this finding at paragraph 10:

> "There is no issue involving care. The only issue is financial dependence. The Secretary of State accepted their dependency when granting entry clearance. The appellants are all mature adults. I have not seen any objective evidence to persuade me on the balance of probabilities that they have never worked in Pakistan and were financially dependent on their sponsor whilst there. The evidence of the current situation is confused. The appellants each have one letter addressed to them at the sponsor's address but he claims to be living at that address alone, for council tax purposes. I find on this evidence he is an unreliable witness. I have not seen any independent supporting evidence at all that he lives with his children other than those singular letters providing a national insurance number and doctor's registration. As adults allegedly living at a certain address I would expect to see far more evidence than that. Similarly, there is no evidence at all that he supports them financially other than that he appears to be assisting them with the Tribunal fees and lawyers' bills. That is not the day-to-day living costs which create a dependency between a sponsor and his adult children."

The appellants' solicitors submitted grounds of appeal against the FTT's decision in which it was highlighted that as the appellants had

recently entered the United Kingdom and had been previously accepted to have been dependent upon the sponsor, that was sufficient for there to be continuing dependence. Those grounds also argued that the FtT did not give cogent reasons for dismissing the appeal.

FtT Judge Scott-Baker granted permission to appeal in a decision dated 16 July 2019 and made the following observations:

> "4. Findings made at [9] were succinct. The judge accepted that the respondent had accepted dependency at the time of entry clearance. The judge at [1] had repeated the narrative of the respondent that no evidence of dependency had been produced but arguably the respondent had been referring to the position on the current application rather than the out of country application, it being the case that the ECO would have had to have been satisfied on all issues to have issued the residence permits. This misunderstanding has been compounded at [10] when the judge records that they had not produced evidence to persuade him that they were financially dependent on the sponsor whilst in Pakistan.
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> 5. Before the judge there was further evidence. It is arguable that the confusion on the facts at the time of the grant of entry clearance has tainted the approach by the judge to the evidence. The sponsor explained at [5] that the appellants did not work, could not speak English and were entirely dependent on him. In the context of this finding the evidence produced by the appellants arguably should have been given due weight."

The matter now comes before us to determine whether the FtT's decision contains an error of law. We heard succinct submissions from Ms Hashmi on behalf of the appellants. She accepted that the evidence available to the FtT was confused because on the one hand there were letters linking the appellants to the sponsor's address, yet on the other hand there was a council tax statement confirming that the sponsor received a 25% discount for being a single occupier - see the letter issued by Manchester City Council on 5 March 2018. Ms Hashmi argued that notwithstanding the Council's letter, there was only one conclusion that the judge was entitled to reach on the evidence and that is that these appellants remained dependent upon their sponsor.

We invited Ms Hashmi to clarify why a further application could not be made which did not refer to or rely upon confused and inconsistent evidence. She responded that such an application was unnecessary because the application to which this appeal relates should be successful.

In response, Mr Bates invited us to uphold the FtT's decision for the reasons that were provided by it. Mr Bates acknowledged that there were some difficulties with the FtT's finding as to dependency in the

past but that that did not infect the judge's finding that the current situation is confused.

We readily accept that the FtT was not entitled to find that the appellants were not financially dependent on their sponsor when they were in Pakistan. That went against the respondent's earlier grant of a family permit. However, in our view, that does not taint or infect the pivotal finding as to the situation at the date of the hearing before the FtT. The FtT was entitled to find that the evidence of the current situation is confused. There was a straightforward inconsistency between the council tax documents and the other documentation.

The other documentation, as the FtT noted, was very sparse indeed and limited to confirmation that the appellants lived at the relevant address for the purposes of GP registration and national insurance registration. It is very difficult to reconcile that evidence with the council tax evidence that the sponsor lived on his own. There appears to have been no evidence before the FtT to explain the inconsistency. In any event, the FtT regarded the sponsor as an unreliable witness, bearing in mind that inconsistency. That inconsistency was sufficient for the FtT to conclude that the appellants were not living at the sponsor's address and were not dependent upon him.

In all the circumstances, we are satisfied that there was therefore no material error of law in the FtT's decision.

We note that when granting permission, Judge Scott-Baker was concerned that there might have been some confusion as to the facts at the time of the grant of entry clearance and that may have tainted the judge's approach to the more up-to-date evidence. Whilst Judge Scott-Baker was concerned that such a submission might be arguable, having had the opportunity to consider all the evidence in full, we are not satisfied that the judge's error as to what the position was in the past in any way materially affected the judge's findings as to the position at the date of hearing.

Judge Scott-Baker was also concerned that the evidence adduced by the appellants, including the claim that they could not work and could not speak English, should have been given due weight. Weight is a matter for the FtT. The FtT was clearly aware of the evidence in support of the appellants' claims, having referred to that evidence during the course of the decision. The FtT was entitled to attach limited weight to that evidence, bearing in mind the significant inconsistency within the evidence as to residence and the corresponding claim of financial dependency.

For all those reasons we find that there is no material error of law in the FtT's decision and we dismiss the appeals of the appellants.

Notice of decision

There is no material error of law in the FtT's decision and we do not set it aside.

Signed: *UTJ Plimmer* Date: 8 October 2019

Upper Tribunal Judge Plimmer