



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: EA/03768/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34 of the Decision & Reasons Promulgated
Tribunal Procedure (Upper On 17th June 2020
Tribunal) Rules 2008
Without a hearing
On 5th June 2020**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

**Between
MOHAMMED AWAIS
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born in December 1983. He applied for a residence card as an extended family member of an EEA national, namely his brother, in August 2017. His application was refused on 19th December 2017, it was reconsidered by the respondent, but refused again on 15th July 2019. His appeal against the decision to refuse to grant him a residence card was dismissed by First-tier Tribunal Judge Rea in a determination promulgated on the 1st November 2019.
2. Permission to appeal was granted by First-tier Tribunal Judge JK Swaney on all grounds on 5th March 2020 on the basis that it was arguable that the First-tier Judge had erred in law in requiring that the appellant

continue to be a member of the household which was arguably not a requirement of Regulation 8(2)(b)(ii) of the Immigration (EEA) Regulations 2016, and arguably was not consistent with Dauhoo (EEA Regulations – reg 8(2)) Mauritius [2012] UKUT 79 (IAC).

3. In light of the need to take precautions against the spread of COVID-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly directions were sent out by the Vice President of the Upper Tribunal by email on 7th April 2020 seeking written submissions on the assertion of an error of law from both parties with a view to determining that issue on the papers, and giving an opportunity for any party who felt that a hearing was necessary in the interests of justice to make submissions on that issue too. Submissions were received from the appellant and respondent, but no reply (as permitted by the directions) was received from the appellant to the respondent's submissions.
4. The matter came before me to determine whether it is in the interests of justice to decide this matter without a hearing and if so to determine whether the First-tier Tribunal has erred in law.

Submissions – Error of Law

5. The error of law submissions from Western Solicitors for the appellant rely upon the grounds of appeal, and the summary of the error as set out in the grant of permission to appeal. In brief it is argued that it is clear from both the Regulation 8(2) of the Immigration (EEA) Regulations 2016 and Dauhoo that the possibilities to qualify as an extended family member are via showing that either you were previously a member of the household or dependent on the EEA national and either that you are currently a member of the household or dependent. It is argued that the First-tier Tribunal erred in law because the First-tier Judge found at paragraphs 18 and 19 that the appellant is currently a member of his brother's household and financially dependent on him, and also that he was part of his brother's household in the past up until 1996, and that thus, in accordance with Dauhoo, this qualifies him under Regulation 8(2) of the EEA Regulations.
6. It is argued that there is a factual error or an insufficiently reasoned finding at paragraph 20 which states that the appellant was financially dependent on his parents and not exclusively on his brother in the period 1996 to 2004, when his brother went to work in Spain, as it is clear from the evidence that his brother was sending the family funds to support them. Further the evidence of the appellant's sister which supports this continuing financial dependency was not considered. It is also argued that there was procedural unfairness as the sponsor was not given an opportunity to address any specific concerns of the judge over financial matters and this was not properly explored in the hearing.
7. In any case, it is argued, there is no requirement under the Regulations as outlined in Dauhoo that the appellant has to be continuously part of the household, and it is clear that past membership of a household and

currently membership suffices to make the appellant an extended family member. This is particularly the case given what is said in Aladeselu and Others (2006 Regs - Reg 8) Nigeria [2011] UKUT 253 (IAC) that no restrictions should be applied to the Regulations other than those that appear in the ordinary language.

8. It is submitted that the appeal should be remade and allowed unless the Upper Tribunal requires further evidence, in which case an oral hearing would be needed.
9. The Secretary of State, through submissions from Mr C Bates dated 21st April 2020, accepts that the First-tier Tribunal found that potentially the requirements of the Regulations at 8(2)(b) and Dauhoo were met due to the appellant having satisfied the test to be currently dependent and a member of the EEA national's household, and having been a member of the same household in Pakistan prior to 1996, albeit that the household was headed by their parents.
10. The First-tier Tribunal found however that there was limited evidence of prior dependency and had to consider whether the gap of 18 years was significant. The fact that the sponsor was not an EEA national in 1996 (because he only became an EEA national after he lived in Spain in or around 2014) meant that the Regulations were not met, see Moneke (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC), which finds that the EEA national must be such a national at the time of the past household membership. There can be no material error of law therefore with respect to the issue of the past shared household as the sponsor was not an EEA national in 1996.
11. It is argued that the First-tier Tribunal followed the guidance in Reyes (EEA Reg: dependency) [2013] UKUT 314 (IAC) as they holistically examined all of the evidence regarding financial dependency. The evidence only showed sporadic and limited financial support, see paragraphs 12 to 20 of the decision. It was therefore rationally open to the First-tier Tribunal to conclude that the sponsor had not provided for the appellant's essential living needs in the past. There was no procedural unfairness, particularly as there is no witness statement evidence provided of anything happening at the hearing which was unfair, and the First-tier Tribunal was entitled to conclude that the witness evidence was insufficient to establish dependency for essential needs.

Conclusions - Error of Law

12. It is clearly accepted by the First-tier Tribunal that the appellant is currently a member of his brother's household and financially dependent on him and that this has been the case since his brother came to the UK as a Spanish citizen in 2014, see paragraph 18 of the decision.
13. It was correctly identified from the start of the decision, see paragraph two, that the question to be determined in the appeal was whether the

evidence of past dependency and membership of the household was sufficient to meet Regulation 8 of the Immigration (EEA) Regulations 2016. Reference is made to Dauhoo, at paragraph 14 of the decision, with the key test set out.

14. It would have been desirable if the First-tier Tribunal had then turned to the case of Moneke (EEA - OFMs) Nigeria which states at ii) of the head note as follows: "In either case the dependency or membership of the household must be on a person who is an EEA national at the material time. For this reason it is essential that tribunal judges establish when the sponsor acquired EEA nationality."
15. From the evidence of the appellant's brother set out at paragraph 12 of the decision it is clear that he, the sponsor, obtained Spanish nationality not early than 2009, as he explained that he obtained his citizenship as a result of result of working for ten years in Spain and gave evidence that he moved to Spain in 1999. As submitted by the respondent relying on Moneke (EEA - OFMs) Nigeria it is clear that the appellant's brother was not therefore an EEA national when they were part of the same household in Pakistan. As such there is no material error of law by the First-tier Tribunal in not allowing the appeal on the basis of the prior membership of a household as it is a precondition that the EEA national has his citizenship at that point in time. There is no evidence that at any point of time prior to 2014, when the appellant's brother entered the UK, that the appellant and his brother shared a "prior" household whilst his brother was an EEA citizen.
16. The only matter which therefore remains is whether the consideration by the First-tier Tribunal of the issue of past dependency was fair; included consideration of all of the evidence; and was rational. The issue of dependency is dealt with at paragraph 20 of the decision. The First-tier Tribunal states that the evidence of the brother was that he sent some money between 1996 and 2004 to the appellant and his family in Pakistan when he could, but decides that this did not amount to evidence which was sufficiently specific or of sufficiently regular support to show on the balance of probabilities that the contribution was an essential part of the family finances. If the evidence of prior dependency on which the appellant relies is during this period then again there can be no material error of law in dismissing the appeal as at that time the appellant's brother did not have Spanish citizenship, which he must have held to qualify under this provision, see once again Moneke (EEA - OFMs) Nigeria . I have checked the appeal statements and the recorded evidence in the decision, and there is nothing which contradicts this being the position.
17. There is no evidence of unfairness in the determination of the appeal. Unfortunately neither of the parties' representatives nor the First-tier Tribunal Judge gave consideration to the case of Moneke (EEA - OFMs) Nigeria which, as set out above, points to it being essential to determine when the sponsor acquired EEA nationality, and consider whether this was the case at the point of time of the claimed prior

membership of the same household or dependency. Although, as a result, the decision did not clearly explain the fundamental reason why the appeal could not succeed, which is the date on which the appellant's brother obtained his Spanish nationality, I do not find that the failure in reasoning is a reason to set aside the decision as it is inevitable on the facts of the case that the appeal cannot succeed, and I find that my setting the reasoning out in this decision suffices to ensure that the appellant understands why his appeal has been and must be dismissed.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal under the Immigration (EEA) Regulations 2016.

Signed Fiona Lindsley
Upper Tribunal Judge Lindsley
Date 5th June 2020