Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/06712/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre **Working Remotely by Skype for Business** **On 4 February 2021**	**Decision & Reasons Promulgated** **On 25 February 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AMAL RIADI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Solomon, instructed by Farani Taylor Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Morocco who was born on 27 February 1983.

2. On 19 August 2019, the appellant applied for a residence card as an extended family member ("EFM") of an EEA national exercising Treaty rights in the UK under reg 18(4) (read with reg 8(2)) of the Immigration (EEA) Regulations 2016 (SI 2016/1052 as amended) (the "EEA Regulations").

3. On 26 November 2019, the Secretary of State refused the application for a residence card on the basis that she was not satisfied that the appellant had been dependent upon her brother, the sponsor and EEA national, prior to coming to the United Kingdom in 2011. As a consequence, the appellant did not meet the requirements to be an EFM under reg 8(2)(b).

4. The appellant appealed to the First-tier Tribunal. In a determination sent on 5 March 2020, Judge V A Cox dismissed the appellant's appeal. Like the respondent, the judge found, on the basis of the oral and documentary evidence, that she was not satisfied that the appellant had been dependent upon the sponsor as it had not been shown that any financial support provided to him had met her "essential living expenses".

5. The appellant sought permission to appeal to the Upper Tribunal essentially on two grounds. First, the judge had misdirected herself as to the meaning of "dependency" under the EEA Regulations by requiring the appellant to establish that money received from her brother provided for "all of her essential needs". Secondly, the judge had erred in-law by failing to take a holistic view of the relationship between the appellant and sponsor, in particular by failing to take into account her emotional dependency upon her brother and her personal history and the closeness of their relationship.

6. On 23 June 2020, the First-tier Tribunal (Judge Bird) granted the appellant permission to appeal on both grounds.

7. Following the issue of directions by the UT in the light of the COVID-19 crisis, further submissions were made on behalf of the Secretary of State on 25 August 2020 and by the appellant on 2 September 2020.

8. Thereafter, the appeal was listed for a hearing to be conducted remotely by Skype for Business. The appeal was listed at the Cardiff Civil Justice Centre on 4 February 2020 with the court working remotely. Mr Solomon, who represented the appellant, and Mr Howells, who represented the respondent, joined the hearing remotely.

9. In his oral submissions, Mr Solomon relied upon the further submissions dated 2 September 2020 which he had drafted. In summary, he relied upon both grounds.

10. First, Mr Solomon submitted that the judge had misdirected herself in para 35 of her determination when stating that the meaning of "dependency" required the appellant to establish that her brother provided financially for "all of her essential needs". Mr Solomon submitted that there was no requirement that her essential needs should be wholly met by the sponsor. It was plain that it was sufficient, in order to establish dependency under the EEA Regulations, that the sponsor's financial support provided for some of her essential living needs. Mr Solomon relied upon the decision of the Upper Tribunal in Reyes (EEA Regs: dependency) [2013] UKUT 314 at [22]' He also relied on the Home Office Guidance, "Free Movement Rights:

Extended Family Members of EEA Nationals", (version 7.0) dated 27 March 2019 which remained in force and which, at page 18 of 33, stated that:

> "The applicant does not need to be dependent on the EEA national to meet all or most of their essential needs. For example, an applicant is considered dependent if they receive a pension which covers half of their essential needs and money from their EEA national sponsor which covers the other half …."

11. In his submissions, Mr Solomon pointed out that, at para 45, the judge had found that the appellant's brother did provide "some financial support" and yet went on to find that she had not established that that support provided for her "essential living expenses". Mr Solomon submitted that it was unclear whether the judge had, therefore, properly applied the approach to "dependency" which did not require that the appellant establish that her brother's financial support provide "wholly or mainly" for her essential needs.

12. Secondly, Mr Solomon submitted, again in reliance upon, inter alia, the UT's decision in Reyes [19]:

> "The court envisages that questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependency that is genuine."

13. Mr Solomon submitted that the judge had failed to engage with that definition and apply it when, on the basis of the evidence, there was acceptance by the judge of emotional support.

14. In response, and having heard Mr Solomon's submissions, Mr Howells accepted that the judge had materially erred in law as set out in Ground 1. He accepted that the judge had misdirected herself in para 35 by requiring the Appellant to establish, in order to prove "dependency" upon her brother, that money received from him provided for "all of her essential needs". Mr Howells accepted that that error was material since, in particular in para 45 of her determination, it was unclear how the judge had reached her conclusion that the appellant had not established dependency upon her brother in meeting her "essential living expenses" when the judge had also accepted that the appellant had, in fact, through a friend provided her with financial support. Mr Howells accepted that the judge's decision could not stand and that the appeal should be remitted to the First-tier Tribunal for a *de novo* hearing in order to remake the decision. Mr Howells did not, however, concede Ground 2.

15. In the light of Mr Howells' concession on Ground 1, I raised with both representatives whether it was necessary for me to resolve Ground 2. Both agreed that it was not necessary and that I should reach my decision on the basis of Ground 1 and remit the appeal for a fresh hearing.

16. I agree with Mr Howells' concession. It is plain from the authorities that in order to establish "dependency" under the EEA Regulations it is not

necessary to establish that a sponsor's financial support meets all the individual's essential needs. The EEA national's financial support must be "material" in order to meet *some* of the individual's essential needs in fact even, of course, if that reliance is, as a result, of the individual's choice not to provide for their own needs, for example, by not working at all or sufficiently to meet their essential or basic needs (see Lim v ECO, Manila [2015] EWCA Civ 1383 at [32]). The judge misdirected herself at para 35 and thereafter, having found that the sponsor did provide "some" financial support, failed to give adequate reasons why, in para 45 in particular, the appellant had not established she was "dependent" upon the sponsor. That was a material error of law and the judge's decision cannot be legally sustained.

17. In the light of that, the appeal will necessarily need to be re-heard *de novo* by the First-tier Tribunal, I do not consider it necessary to reach any concluded view on Ground 2. The decision clearly cannot stand on the basis of the material error of law identified in Ground 1. I would simply observe that, on the face of it, Mr Solomon's submissions in relation to Ground 2 do mirror what was said by the UT in Reyes at [19]. The issue of whether that view is correct and consistent with the ECJ/CJEU's decisions and what was said by the Court of Appeal in Lim v ECO should remain to be determined when central to the disposition of a case. Here, it is not and I would not wish to express any view as to whether the clear statement by the UT in Reyes should be reconsidered.

Decision

18. The decision of the First-tier Tribunal to dismiss the appellant's appeal under the Immigration (EEA) Regulations 2016 involved the making of a material error of law. That decision cannot stand and is set aside.

19. Having regard to the extent and nature of fact-finding required, and para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit the appeal to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge V A Cox.

Signed

Andrew Grubb

Judge of the Upper Tribunal
8 February 2021