



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004838

First-tier Tribunal No:
EA/50599/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of December 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

GEOVANIO MAIA SALSINHA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Jebb, instructed by Phoenix Law

For the Respondent: Ms S Arif, Senior Home Office Presenting Officer

Heard at Royal Courts of Justice (Belfast) on 20 November 2024

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge S P J Buchanan, promulgated on 17 January 2023, dismissing his appeal against a decision made by the Secretary of State on 14 August 2020 to refuse to issue him a residence card as confirmation that he is an extended family member of an EEA national exercising treaty rights in the United Kingdom. That application was made under the Immigration (European Economic Area) Regulations 2016 and of which the right of appeal arose.

2. The appellant arrived in the United Kingdom on 11 October 2019 with a visit visa and on 14 August 2020 applied for a residence card to confirm that he is the extended family member of his older brother Benigno Maia Salsinha who had moved to the United Kingdom in November 2012 at which point he started sending money back to help the family. The appellant's father died on 13 May 2018 and subsequent to that, their family were reliant for their basic needs on the support from the brother.
3. It is his case that he has been completely dependent on his brother since his arrival and lives with him in Lurgan.
4. The Secretary of State rejected the application on the grounds that the appellant had failed to provide sufficient evidence that he was dependent on or residing with the EEA national sponsor prior to entering the United Kingdom or had continued to be dependent or residing with him after his arrival.
5. The judge heard evidence from the appellant, the appellant's brother and from the brother's partner. He also heard submissions from both representatives. In addition to the oral evidence, he also had before him a conjoined bundle and a skeleton argument from Mr Beech of Counsel who represented the appellant.
6. Having directed himself according to the law [10.1] the judge first addressed the issue of financial dependency setting out [14] a schedule of payments made in 2019 and then addressing residence at the same address in the United Kingdom. The judge found:-
 - (i) there is a stark absence of documentary evidence until January 2019 [19], whether the oral evidence was that the brother paid for all his financial needs [20], that there were no records confirming communications or the income expenditure for the household said to be have been met from money sent by the sponsor, there being no third party material to confirm such costs had been met at any time over the ten year period [22], and no schedule of income and expenditure;
 - (ii) there was no evidence as to how far the four payments made prior to 26 June 2019 would have taken the appellant, there not being evidence as to how much money would be needed to sustain an individual or family over that period, nor evidence as to the costs of the flight said to have been met from the monies received from the sponsor [25]; that there was not a situation of real dependence in Timor-Leste prior to the appellant's departure from there and arrival into the United Kingdom in October 2019, considering the lack of evidence regarding costs and expenditure over such a long period of claimed dependency without a reasonable explanation for its absence whereas the cost of living in 2019 was not satisfied that mere money being made available was enough to establish dependency;

- (iii) their dependency had not been established; that the appellant had been living with his brother as claimed since his arrival in the United Kingdom.
7. The appellant sought permission to appeal on the ground that the judge had erred:-
- (i) in failing to apply the relevant authorities with regard to dependency, in particular SSHD v Rahman [2012] EUECJ C-83/11;
- (ii) in misconstruing the appellant's case in that the appellant's case was not that he had been dependent wholly or mainly since 2012 but only since the death of the father in 2018 thus the records of earlier transactions were not relevant to the point in issue;
- (iii) that the judge had not given sufficient weight to the corroborated records of transactions being made since 2019 which were consistent with the oral evidence;
- (iv) that the judge had erred in requiring a documentary summary of income and expenditure which was not required and in doing so ignored the evidence as to what the money was used for;
- (v) in doubting how far the funds would have gone and in failing to consider whether the appellant was dependent to meet half or even part of his essential needs.
8. On 11 April 2023 First-tier Tribunal Judge Chowdhury granted permission to appeal on all grounds.
9. Mr Jebb relied on the grounds submitting that the judge had not properly applied the relevant case law, including **Latayan** and had misunderstood the case. He submitted further that the judge had reached conclusions not open to him and that when considering the evidence regarding payments prior to 2018, had not simply been evaluating the evidence as a whole but had misunderstood the appellant's case.
10. Ms Arif submitted that the judge had given adequate and sustainable reasons for reaching his conclusions. He had been entitled to note the lack of evidence as to the level of expenditure.
11. I reserved my decision.

The law

12. The EEA Regulations were revoked in their entirety on 31 December 2020 by paragraph 2(2) of Schedule 1(1) to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. They are, however, preserved for certain purposes by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations (SI 2020 1309), ("the EEA Transitional

Regulations”) which sets out those provisions which are preserved for the purposes of applications pending as at 23.00 on 31 December 2020. By operation of reg.3 this includes regs. 12, 17, 18, 19 and 20 of the EEA Regulations for the purposes of considering applications made but still pending at 31 December 2020. It follows from this that the EEA Regulations that the judge had to consider were those in place as at 31 December 2020, subject to the amendments set out in paragraph 6, Schedule 3. There is no material change here.

13. It is for the appellant to show that there were some serious flaws in the judgment that calls for a change to the result of a rehearing. In considering the decision of Judge Buchanan I bear in mind that I am considering the decision of a specialist Tribunal and bear in mind the very cogent observations of the Court of Appeal in Ullah [2024] EWCA Civ 201 and in Volpi v Volpi [2022] EWCA Civ 464. I remind myself that I should be reluctant to interfere in the findings of fact of the First-tier Tribunal. I bear in mind also that I should take care to ensure that any points that are now being sought on appeal were in fact properly raised before the judge, or at least in issue before him.
14. It is also important to bear in mind that this is an experienced judge sitting in a specialist Tribunal. His decision deserves to be accepted unless it is quite clear that he has misdirected himself and I am enjoined not to rush to find misdirections where I might have reached different conclusions or expressed myself differently. Nor should I assume that the Tribunal misdirected itself simply because it does not set out every step in its reasoning.
15. The core question for the judge was whether the appellant had shown that he is dependent on the sponsor. The Court of Appeal gave guidance on this most recently in Latayan v SSHD [2020] EWCA Civ 191, in particular that [23] to [24],

23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket* Case C-1/05; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket* Case C-423/12; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC), dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426):

"19. ... 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 dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual

circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

24. As to the approach to evidence, guidance was given by the Upper Tribunal in *Moneke and others (EEA - OFMs) Nigeria* [2011] UKUT 341 (IAC):

"41. Nevertheless dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in *SM (India)* (above) dependency means dependency in the sense used by the Court of Justice in the case of *Lebon* [1987] ECR 2811. For present purposes we accept that the definition of dependency is accurately captured by the current UKBA ECIs which read as follows at ch.5.12:

"In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations:

Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her essential needs - not in order to have a certain level of income.

Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources.

There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment.

The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived."

42. We of course accept (and as the ECIs reflect) that dependency does not have to be "necessary" in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity: see *SM (India)*. Nevertheless where, as in these cases, able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the

responsibility is on the applicant to satisfy Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.

43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters."

16. It is apparent from the above that an absence of documentary evidence may be problematic.
17. I accept that it was the appellant's case that, although money had been transferred to the family from time to time prior to 2018, a dependency of necessity had arisen only after the father's death, as is set out in the appellant's witness statement, until 2018 their father had provided for the family. I do not, however, consider that Judge Buchanan erred in his approach to the evidence or was misled as to the nature of the case as put to him. It is evident from [19] that the judge focused on payments made in 2019 onwards and it was also open to him to note the lack of evidence as to expenditure. Without that evidence it is not possible to quantify what the essential needs are and the judge was manifestly entitled to note that. It was also open to him to note a lack of evidence as to where the money was spent given that it had been said it was spent on education as well as ordinary household bills, groceries and so on.
18. Significantly at paragraphs 24 and 25 the judge wrote:
 24. What is not explained in evidence is how far the four payments made prior to 26 June 2019 as shown in the list would have taken the appellant. Of the vouched transfers there are four transfers pre-dating 26 June amounting in total to \$643.08 USD covering 4 January to 25 June 2019. I was not assisted in understanding the family's situation, or the appellant's individual circumstances, in Timor-Leste in that period by reference to how much money would probably be needed to sustain an individual or family over that period of time. I was left with the bald assertion that money was sent and that the money was needed to meet the appellant's essential needs.
 25. As regards the final two payments made on 26 June and 18 September 2019, there is no evidence of the costs of the flight which are said to have been met from the money received from the sponsor. So, I am not in a position to understand what amount was needed for, and then spent on, essential needs in respect of those last two payments either.
19. Equally, there is a focus on 2019 at paragraph 27.
20. It is also clear from what the judge wrote at [28] that he was aware that was said about the money prior to 2018 was that it was money to help the family rather than it, for example, being to establish dependency.
21. That said, at [28] the judge wrote this:-

“I am therefore unable to infer from the payments made in August 2013 and October 2014, taking the appellant’s claim at its highest, what is needed for the individual appellant to live in Timor-Leste. I cannot answer the question about how the family was able to survive between the dates of those two payments if the only income was from the sponsor. The sums identified as paid are so modest as to leave it unexplained how the family were able to meet their essential needs from the money sent”.

22. At first glance this looks as though the judge did misunderstand the case. The evidence was that the father had provided prior to that but it is of note that what the judge says is this:-

“In my judgement, this illustrates what I have said above: that the costs of living for the appellant have not been shown in evidence before me. There is an assertion of dependency but an absence of evidence to set the assertion in context. There is an absence of evidence about what the real costs of ‘dependency’ were for the appellant in the period prior to his departure to the UK. Although money might have been sent to help the family out, and separately might have been sent to the appellant himself, it has not been established how the family or indeed, how the appellant was able to survive on the very limited amount of money shown to have been sent by the sponsor from time to time”.

23. I consider that this is a sufficient basis on which it can be said that the judge, although it could have been better expressed, was using the evidence regarding the other situation as background. It does not, in my view, come sufficiently near to demonstrating that he had misunderstood the case or that his conclusions with regard to the lack of dependency being shown in 2019, that is after the father’s death, is such to show an error of law. Nor can it properly be argued that the judge failed properly to apply the law, or the relevant case law.
24. I bear in mind that the judge heard all of the evidence and in the light of limited evidence as to what the actual costs of living would be for the appellant in Timor-Leste, reached a conclusion that was open to him on the evidence and for which he gave adequate and sustainable reasons.
25. Accordingly, for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 6 December 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal