



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02926/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 February 2014

Determination Promulgated
On 19 February 2014

Before

MR JUSTICE JAY
UPPER TRIBUNAL JUDGE J K H RINTOUL

Between

MR KARIM HAMAOU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

For the Respondent: Mr Lam, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of the First-tier Tribunal heard before Judge Scott, promulgated on 6 November 2013, whereby the appellant's application

for a residence card as an extended family member of an EEA national exercising treaty rights in this country was dismissed.

2. The appellant, Mr Karim Hamaoui, was born in Algeria on 4 September 1972. The sponsor is his brother Mourad who is a Swedish national. The appellant came to the United Kingdom on 24 February 2002 on a six month visa and has been here ever since, effectively for over eleven years as an overstayer. On 22 August 2012 he applied for a residence card but this was refused by the Secretary of State on 3 January 2013 under Regulation 8(2) of the Immigration (European Economic Area) Regulations 2006. This provides insofar as is material:

“8.-

- (2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and
 - (a) the person is residing in a country other than the United Kingdom in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
 - (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
 - (c) the person satisfied the condition in paragraph (a) has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.”

3. In the case of **Dauhoo (EEA Regulations - Regulation 8(2)) [2012] UKUT 79 (IAC)** this Tribunal held that a person can succeed in establishing that he is an extended family member in any one of four different ways each of which requires proving a relevant connection both before arriving in the United Kingdom and in the United Kingdom, namely -

- (1) prior dependency and present dependency;
- (2) prior membership of a household and present membership of a household;
- (3) prior dependency and present membership of a household;
- (4) prior membership of a household and present dependency.

4. Now, having heard evidence from the appellant, the sponsor and three other witnesses, the First-tier Tribunal concluded that since coming to the United Kingdom in February 2002 the appellant has lived as a member of the sponsor’s household and has been financially dependent on him. The issue therefore was whether the appellant satisfied the first or “prior” part of the test in respect either of prior dependency or prior membership of a household. At paragraph 26 of his determination Judge Scott held that the prior membership of a household test was

not satisfied. This was because the appellant lived in his father's household and not the sponsor's. Not merely did the father own the house, he paid the bills since the sponsor left Algeria in 1986.

5. This left the question of prior dependency. The First-tier Tribunal's enquiry focused on the period 2000 to February 2002. There was some evidence, albeit of an unsatisfactory nature, that the sponsor was contributing financially towards the cost of the appellant's studies. The appellant completed his studies in 2000. As for the key period, one of less than two years, the First-tier Tribunal reached the following conclusion:

"29. The question then is whether the appellant was dependent on the sponsor after he finished his degree in 2000 and before he came to the United Kingdom in February 2002. There was evidence that money was sent to the appellant by the sponsor, but I found that evidence to be inconsistent as to the amounts and non-specific as to the frequency of remittances. It was also said that money was sent by the sponsor by way of money transfers but there is simply no evidence to support this. The appellant estimated that he received an average of about £130 per month from the sponsor, but I find that the evidence does not support that claim.

30. Bearing in mind that, throughout the period in question, the appellant lived at home in his father's house and was supported by him there, I am unable to find that the appellant was dependent on the sponsor. I accept that he did receive some money from the sponsor from time to time, but I am not satisfied that the funds sent were any more than occasional gifts sent out of the love, favour and affection of the sponsor for his younger brother, the appellant."

6. Accordingly, the case under Regulation 8(2) of the Immigration (European Economic Area) Regulations 2006 was dismissed. It is not the appellant's case that the First-tier Tribunal lapsed into factual error or reached a decision which was perverse and/or based on no evidence. Rather the complaint is that no regard was paid to relevant Home Office Guidance. Paragraph 2.4 of the Guidance on EEA family members, in particular extended family members, provides insofar as material;

"An applicant may be considered under Regulation 8 of the 2006 Regulations if she/he falls within any of the following conditions:

- was living as part of the EEA national's household in an EEA state before the EEA national came to the United Kingdom; or
- is living as part of the EEA national's household in the United Kingdom; or
- has joined the EEA national in the UK and continues to be dependent on the EEA national or his or her spouse (see Section 2.3.2); or

- strictly requires personal care from the EEA national on serious health grounds;
- and prove that she/he is in a durable relationship with the EEA national.”

7. Regulation 8 of the Immigration (European Economic Area) Regulations 2006 was considered by the Court of Appeal in the case of **Oboh v Secretary of State for the Home Department** [2013] EWCA Civ 1525 where at paragraph 46 that court made it clear that the domestic provision was compliant and consistent with the scope of Article 3(2) of the relevant European Directive. Mr Lam’s submission before us is that no proper regard was paid by the First-tier Tribunal to the relevant guidance to which we have drawn attention. He submits that the five categories to which we have made reference are in the alternative to one another and that given that his case falls within one of the categories he ought to have been granted the relevant residence card. However, Mr Lam, with respect to him needs to read on to the end of paragraph 2.4 of the first part of the guidance on extended family members because there we see the following:

“The guidance on assessing if extended family members can be issued with a document confirming their right of residence – see chapter 5 of the ECIs.”

8. We have looked at chapter 5 of the ECIs, in particular section 5.1.13, and there is clear reference to Regulation 8 of the 2006 Regulations. In other words all that the guidance does is to provide the framework for consideration of an application for a residence card, it does not add to Regulation 8(2), still less does it contradict it. That in any event would be a somewhat surprising conclusion.
9. The authority of **Dauhoo** is authority for the proposition that there are four different ways in which a person can establish an entitlement to a residence card under Regulation 8(2), and this appellant failed to establish a good case under all four of them. In our judgment he cannot seek to rely on the Secretary of State’s guidance which after all is only loose textured instructions to caseworkers as to how they should approach the consideration of cases under Regulation 8 as overriding the clear terms of that Regulation. In short, with regret, we have to conclude that there is no merit in this appeal and it is therefore dismissed.

Signed

Date

Mr Justice Jay