



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001159
EA/05641/2021

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 27 October 2022**

**Decision & Reasons Promulgated
On 18th December 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD AYOUB KHAN
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes instructed by Vista Legal Services.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Parkes ('the Judge'), promulgated on 19 January 2022, who dismissed the appellant's appeal against the refusal by an Entry Clearance Officer (ECO) of an application for a residence card as the dependent extended family member of an EEA national exercising treaty rights in the UK. The application was made on 10 September

2020, refused on 16 March 2021, and the notice of appeal dated 12 April 2021.

2. The Judge's findings are set out from [8] in which the Judge noted the evidence of the sponsor that he had been supporting the appellant since 2012 at the house in which the appellant lives, which was their father's house, which it was claimed had passed to the sponsor when their father died.
3. The Judge comments upon the evidence from [9 - 12] following which the Judge finds:
 13. There is no evidence that the Sponsor has used the house as his own for residential purposes or, as noted above, when his ownership commenced. The fact of ownership by itself does not make the Appellant's circumstances amount to living in the Sponsor's household. The Sponsor's household is in the UK with his wife and family. The case has been put forward on the basis of dependency and not membership of a household but in either capacity the connection has to be continuous.
 14. Dependency commenced in 2012 according to the Sponsor. The evidence remittances is very limited until quite recently. There are none for 2012 and those for the years up to 2017 are very few and far between. Not only does the evidence not show that the Sponsor was continuously remitting money to the Appellant the evidence of the Appellant's circumstances in those years is conspicuous by its complete absence. The evidence of his circumstances as they currently stand is not particularly good, the affidavit is remarkably short and devoid of detail and the supporting evidence for the expenses is similarly limited.
 15. In summary the evidence does not show that the Appellant is dependent on the Sponsor. Even if the Appellant is currently dependent on the Sponsor the evidence does not show continuous dependency as required by the regulations. On the evidence presented the Appellant has not discharged the burden of proof and the appeal does not succeed.
 16. So far as the Appellant's being a burden on the UK's social security system is concerned it is not clear that paragraph 13(3) permits a refusal. Couched in the present tense it suggests that an individual has to be in the UK rather than there being a prospective right of refusal.
4. The appellant sought permission to appeal asserting the Judge had erred in applying the criteria of continuity of dependency, failing to address the oral witness evidence, proceeded under a mistake of fact or failed to take account of material fact, and failed to give adequate reasons.
5. Permission to appeal was granted by another judge of the First-tier Tribunal on 14 April 2022, who wrote :
 3. *This was an appeal against refusal of entry clearance, rather than refusal of an in country application. At paragraph 3 of the judgment, the Judge referred to the case of 'Chowdhury' and stated that the appellant must show dependency on the sponsor which has been continuous and at paragraph 15 found that the evidence does not show continuous dependency and that this was required by the EEA Regulations. There is an arguable error of law.*

Error of law

- 6.** In relation to the first issue the grounds refer to the Judge's reference to the decision in Chowdhury which was accepted to be a reference to Chowdhury v Secretary of State for the Home Department [2021] EWCA Civ 1220. The grounds argue that reliance upon such is a legal misdirection as the appeal considered in that case related to a person within the UK whereas this is an out of country appeal. That submission is correct. In Chowdhury the issue was the correct interpretation of the phrase "*and continues to be dependent*" in regulation 8 (2)(c) of the 2006 Regulations - later regulation 8(2)(ii) of the 2016 Regulations - rather than regulation 8(2)(b)(i) which is relevant to assessing the issue when a person wishes to join the EU national in the UK, as in this case.
- 7.** The relevant section of the regulation in full reads:
 - (2) The condition in this paragraph is that the person is—
 - (a) a relative of an EEA national; and
 - (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—
 - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.
- 8.** In his submissions Mr Holmes stated that the incorrect self-direction is relied upon on a number of occasions during the determination.
- 9.** It is not disputed before me that the appeal was not based upon a claim of membership of a household but one based on dependency.
- 10.** Although it was not disputed that to establish dependency it is necessary to consider more than just a limited snapshot in time Mr Holmes submitted the issue is that it was not necessary in such a case to show continuity of support.
- 11.** Although the specific wording of the regulation applicable to an out of country application is different from that in relation to a person already in the UK, there is still a requirement to show that dependency exist. That is a question of fact.
- 12.** The core finding of the Judge at [14] is that the evidence did not support the claim that the appellant is dependent upon the sponsor. The finding in relation to continuous dependency is a finding in the alternative, i.e. that even if the appellant is currently dependent upon the sponsor the evidence did not show continuous dependency, but that is an obiter comment as the primary finding is clearly that dependency had not been established as a matter of fact.
- 13.** I find no merit in a claim the Judge failed to consider the evidence as the Judge clearly considered the evidence with the required degree of

anxious scrutiny. The Judge was not required to set out reasons or findings in relation to each and every aspect of the evidence. It was the evidence of the witnesses, both written and oral, which is the basis for the Judge’s adverse finding. The Judge did not need to find that the witness had not told the truth, as the finding of the Judge is that the evidence provided did not cross the required threshold of establishing what had been claimed.

- 14.** In relation to the assertion of a mistake of fact in relation to the purpose for which the appellant produced evidence regarding the sponsors ownership of the property, such as to establish legal error, if the property was not the sponsors there will be no element of dependence in allowing the appellant to remain there. The concern recorded by the Judge is that the property would normally go the eldest son which is the appellant and not the sponsor. The core finding of the Judge on this point is that there was insufficient evidence to show the appellant’s father died which was said to be the basis for the transfer of ownership of property. That is a finding based upon the evidence provided to the Judge.
- 15.** The argument the Judge failed to give adequate reasons is not made out. A reader of the determination can see why the Judge came to the conclusions that he did on the evidence. The test is whether adequate reasons have been provided, not whether those reasons are perfect.
- 16.** The appellant fails to establish the decision is outside the range of those available to the Judge on the evidence. The burden was upon the appellant to establish that he required the support of the EEA national sponsor to meet his essential needs. That is a question of fact. The Judge did not find this made out on the limited evidence made available.

Decision

- 17. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 18.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such no order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 9 November 2022