Upper Tribunal
(Immigration and Asylum Chamber)

Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 26 June 2014	.....

Before

THE HONOURABLE MR JUSTICE HADDON-CAVE

UPPER TRIBUNAL JUDGE COKER

Between

GANGA BUDHATHOKI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

Representation :

For the Appellant: Mr J Reynolds of Counsel instructed by Reemans Solicitors

For the Respondent: Mr R Hopkin, Home Office Presenting Officer

DETERMINATION AND REASONS

1.
This is an appeal by the Secretary of State for the Home Department against a decision of the Judge of the First-tier Tribunal Judge Eban determined and promulgated on 7 April 2014, whereby the judge found in favour of the appellant, Ganga Budhathoki, and held that the appellant fell within regulation 7(1)(c) of the Immigration (European Economic Area) Regulations 2006 and the Secretary of State was wrong to refuse a residence card. The reasons for refusal are set out in a statutory letter of refusal and reasons for refusal, both dated 22 April 2013.

2.
The appeal is brought by the Secretary of State on simple grounds based on a failure by the judge to give adequate reasons, in particular, a failure to give reasons in paragraphs 12 and 14 of the Determination, to which paragraphs we shall return.

3.
Permission to appeal was granted on 15 May 2014 on the basis of an arguable failure to give reasons and a failure to consider whether the EEA sponsor in this case was a qualified person exercising treaty rights in the United Kingdom.

The Determination and Reasons

4.
It is necessary to set out some of the salient paragraphs of the Determination and Reasons to see this appeal in its full context:-

“ **The Respondent’s Case**

6. The basis for the decision was that the respondent was not satisfied that the appellant was genuinely dependent on the EEA sponsor.

7. At the hearing Ms Malhotra submitted that when the appellant had applied for a visit visa to come to the UK she relied on the fact that she had extensive valuable property in Nepal which would encourage her to return.

The Appellant’s Claim

8. The appellant claims she meets the criteria laid down in the EEA Regulations.

Evidence

9. I heard the appellant, her son and his wife, the EEA sponsor, give evidence. They all told me that they now live together as a family unit. Following the death of the appellant’s husband in February 2006 the appellant continued to live in her home in Nepal but had no income. The appellant’s son and the EEA sponsor supported the appellant financially and I was referred to evidence of money transfers dating back to 2007 when the appellant was in Nepal and her son and the EEA sponsor were in the UK.

10. The appellant came to the UK as a visitor on three occasions. After the first two she returned home, but during her stay she made the application the subject of this appeal.

11. The witnesses’ evidence was that the appellant continues to own a house and land in Nepal but this does not provide her with an income.

My Findings of Fact

12. I have considered the respondent’s concerns about the evidence provided by the appellant. On the basis of the appellant’s, her son’s and the EEA sponsor’s evidence as well as the documents provided I make the following findings:-

1. The EEA sponsor is an EEA national.

2. The appellant is a non-EEA national.

3. Mr Pradip Budhathoki is the appellant's son.

4. Mr Pradip Budhathoki is married to the EEA sponsor.

5. The appellant, Mr Pradip Budhathoki and the EEA sponsor live together as a family in the same house.

6. Mr Pradip Budhathoki and the EEA sponsor have been sending financial support to the appellant since at least 2007.

7. The appellant has no income other than what she receives from Mr Pradip Budhathoki and the EEA sponsor.

Discussion

[The First-tier Tribunal judge referred to the decision in Reyes (EEA Regs: dependency) [2013] UKUT 314 (IAC) and set out paragraph 19 from that decision.]

14. Dependency is a question of fact. Looking at all the evidence in the round, I find that notwithstanding the appellant's ownership of a house and land in Nepal, the EEA sponsor provides the appellant with material support and she has done so for many years. I find on balance that the appellant is dependent on the EEA sponsor and that the dependency is genuine and not contrived.

15. I find that the appellant falls within Regulation 7(1)(c)."

Analysis

5.
In his submissions for the Secretary of State, Mr Hopkin took issue with sub-paragraphs (1), (4), (5), (6) and (7) of paragraph 12 of the Determination and Reasons. He submitted that there was a failure by the judge to explain (a) what evidence she relied on in relation to those findings of fact; and (b) to give any reasons as to why she had reached such findings.

6.
He further submitted that it was necessary for the judge to have elucidated in relation to each sub-paragraph the evidence and reasons behind each finding because these matters were (a) controversial; and (b) it was necessary to do so in order that the parties could understand, and be in no doubt as to, why those findings of fact had been made.

7.
In making such submissions Mr Hopkin relied on the recent authority of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) which referred to the well-known authority of Tanveer Ahmed [2002] Imm AR 318 and various other authorities about the duty to give reasons, in particular R v Immigration Appeal Tribunal ex parte Khan [1983] QB 790 and Flannery v Halifax Estate Agencies [2000] 1 All ER 373. In the succinct phrase of Henry LJ, "Transparency should be the watch word". Parties should be in no doubt why they have won or lost:

"The judge must explain why he has reached his decision. The question is always what is required of the judge to do so; and that will differ from case to case. Transparency should be the watch word".

8.
Mr Reynolds, for the appellant, submitted that the judge had made a "concise and precise determination" of the evidence, made findings which were appropriate and justified and which could

be explained by the evidence that was before the Secretary of State and before the First-tier Tribunal. He relied in particular on a copy of the passport of the EEA national and the fact that the EEA sponsor and her husband were in a relationship and exercising Treaty rights and evidence that the EEA sponsor worked as a nurse in a fertility clinic. He further relied on a copy of the marriage certificate between them and the fact that the judge heard oral evidence from the sponsor, her husband and the appellant. He submitted that the judge had plainly come to a view that their evidence was to be believed as to dependency and that there was therefore no need for the sort of analysis that MK required as set out in the head note, which reads:

"Where a Tribunal finds oral evidence to be implausible, incredible or unreliable, or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. The bare statement that a witness was not believed or that a document afforded no weight is unlikely to satisfy the requirements to give reasons."

9.
Mr Reynolds submitted that no such issue arose in this case and that, therefore, the decision and the reasons given for it by the judge were satisfactory.

10.
We find both Counsel partially right in their submissions and partially wrong. We were unimpressed by Mr Hopkin's submissions in relation to sub-paragraphs (1), (4) and (5) of paragraph 12. It is plain that there was material before the Secretary of State and the Tribunal justifying those fairly prosaic findings. In our view, no real difficulty arises in the losing party understanding why the determination was as it was on those particular issues, as Mr Reynolds demonstrated. Mr Reynolds for the appellant was, however, in difficulties in relation to sub-paragraphs (6) and (7) of paragraph 12 of the Determination and Reasons. He was also in difficulty in relation to paragraph 14 of the Determination and Reasons, where the judge found that notwithstanding the appellant's ownership of a house and land in Nepal, the EEA sponsor provided the appellant with material support and "on balance" the appellant was dependent.

11.
These difficulties stemmed from paragraph 7 of the Determination and Reasons quoted above which presented Mr Reynolds with an insuperable problem. It is clear that a significant issue at the hearing relied upon by the Secretary of State was that the appellant had applied for a visa to come to the United Kingdom on the basis that she had "extensive valuable property in Nepal which would encourage her to return". The Tribunal raised this with Mr Reynolds who said that he was present at the original hearing and from his recollection the evidence that the property was in a dilapidated state was not the subject of challenge. Regrettably, Mr Reynolds was wrong about this. He should have checked the First-Tier Tribunal record (which was in the bundle before us) before telling the Upper Tribunal something which was misleading. Fortunately, we took the precaution of examining the First-Tier record from which it was clear that the state of the property in Nepal (which the appellant asserted with one breath was "valuable" and when it suited her she asserted it was "dilapidated") was, indeed, controversial and was challenged at the hearing. In these circumstances, it is difficult to understand on what basis the judge concluded that "notwithstanding the appellant's ownership of a house and land in Nepal" there was dependency. No reasons are given for that finding. No reasons are given as to what resolution of the conflict in the evidence and submissions about the state or condition or value or extent of the property in Nepal is given. In our judgement, it is fair to say that a losing party reading this decision would be none the wiser as to why the decision had been reached as it had, or as to the reasoning of the judge on this key controversial issue. The Secretary of State would

be in doubt as to why she had lost. The decision is not “transparent”. In particular, the reasoning behind paragraphs 12(6), 12(7) and 14 is not clear.

Further matters

12.
There are two further matters which we add into this analysis. The first is that it is apparent from the financial records that despite the assertion that there were monthly payments by the EEA sponsor to the appellant, there would appear to be a significant gap from 14 November 2009 when £150 was sent to Nepal until 15 March 2011 when £148.10 was sent, a period of one year and four months. That gap is on the face of it significant, but is unexplained in the judgment. The second issue is the legal context of the decision. The judge set out paragraph 19 of Reyes as to the meaning of dependency for EEA purposes. It is necessary to quote a part of that judgment:

“19 **.** From the above [case law], we glean four key things. First, the test of dependency is a purely factual test. Second, 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 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. It seems to us that the need for a wide-ranging fact-specific approach is indeed enjoined by the Court of Appeal in SM (India) …”

13.
What is absent it seems to us from Judge Eban’s judgment is any indication that she carried out a fact-specific analysis of the evidence or any explanation as to why she concluded in the appellant’s favour as to dependency on a sponsor in the UK in circumstances which, on their face, were puzzling, viz. where (a) the appellant had lived separately in Nepal from the EEA sponsor and her son for many years and (b) she had property in Nepal which she asserted was “valuable”.

Caveat

14.
We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach to deciding cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost.

Conclusion

15.
For those reasons we uphold the appeal, set aside the decision and remit the matter to the First-tier Tribunal for a fresh decision in the light of this judgment.

Signed Date

Mr Justice Haddon-Cave