



Upper Tribunal
(Immigration and Asylum Chamber)

Chowdhury (Extended family members: dependency) 2020] UKUT 00188 (IAC)

THE IMMIGRATION ACTS

Heard at Birmingham

Decision & Reasons Promulgated

On 16th March 2020

.....
Before

UPPER TRIBUNAL JUDGE HANSON

UPPER TRIBUNAL JUDGE MANDALIA

Between

MOSNU AHMED CHOWDHURY

(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr R de Mello and Mr T Muman, Counsel instructed by JM Wilson Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

The words “and continues to be dependent” in regulation 8(2)(c) of the Immigration (European Economic Area) Regulations 2006, properly characterised, require an applicant to establish that there has not been a break in their dependency on the EEA national sponsor.

1.

This appeal raises a simple but important issue regarding the interpretation of regulation 8(2) of the Immigration (European Economic Area) Regulations 2006 (SI 2006 No 1003) (“the 2006 Regulations”), and in particular, the requirement in regulation 8(2)(c) that the person “continues to be dependent upon” the EEA national or to be a member of his household. Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 (SI 2016 No 1052) is in similar terms.

The background

2.

The appellant is a national of Bangladesh. He arrived in the UK on 28th February 2011 and presented a Bangladeshi passport endorsed with entry clearance as a Tier 4 (Student) Migrant, issued on 8th February 2011 and valid until 10th May 2014. He was interviewed at immigration control and because of concerns about his inability to speak English, further enquiry was undertaken. The Immigration Officer concluded that the appellant's standard of English was not adequate for his intended course and following further enquiry, the Admissions Officer of London Denning College, withdrew its sponsorship. The appellant's entry clearance was cancelled. The appellant's appeal against that decision was dismissed for reasons set out in a decision promulgated by First-tier Tribunal Judge Parkes on 17th April 2011.

3.

The appellant remained in the UK unlawfully and in June 2011 he was treated as an absconder. After a significant period of inactivity, on 28th January 2016, the appellant made an application for a Residence Card as the extended family member of an EEA national under regulation 8(2) of the 2006 Regulations. The appellant claimed to be an extended family member of Mr Nashir Ahmed Chowdhury ("the EEA national"), whose sister is the appellant's grandmother. The application was refused by the respondent for reasons set out in a decision dated 2nd August 2016. The respondent was not satisfied that the appellant is related to the EEA national as claimed and was not satisfied that the appellant had provided sufficient evidence that the appellant was a dependent of the EEA national in Bangladesh or in the UK.

4.

The appellant's appeal was dismissed by FtT judge Asjad for reasons set out in a decision promulgated on 29th October 2018. The judge heard evidence from the appellant and the EEA national. The evidence of the EEA national is summarised at paragraph [6] of the decision. Mr Chowdhury claimed that he moved to Italy in 1982 and that he continued to provide his sister, with whom the appellant lived, with money whenever he visited Bangladesh, and would send money via friends who were visiting Bangladesh from Italy. The judge accepted the appellant was part of the EEA national's household in Bangladesh until the appellant left Bangladesh in 2011, and that the appellant was at that time dependent on the EEA national. The judge states at paragraphs [10] and [11] as follows:

"9. The difficulty arises with what happened when the appellant left Bangladesh. It was Mr Ahmed's own written evidence that the appellant joined his household in the UK and began to live with him in December 2014. In oral evidence he said it was February 2015. As noted in Regulation 8 having shown that he was a member of Mr Ahmed's household and/or dependent upon him he must then show that he continued to be dependent upon him or was a member of his household. Both the appellant and Mr Ahmed were noticeably silent about where the appellant was living between 2011 and December 2014/February 2015 in both their witness statements. Neither of them refers to this period at all and paragraph 8 in both their statements simply avoids this period. There is mention in paragraph 12 to the appellant being dependent and residing with his grandfather since coming to the UK - but that is not the case, as this started years later. The large number of photographs do not assist me with that question and nor do the remaining documents - all of which relate to the period after 2014. In answers to questions under examination in chief, it was claimed that the appellant lived with Imamul-Haq-Choudhury - who was sat at the back of the court, but this individual gave no evidence - oral or written.

10. It is not in dispute that the appellant's visa was revoked soon after his arrival in 2011 because he could not speak English (that remains the case in 2018) and that his next application was for this residence card in 2016. Yet, there is I find, no documentary evidence of any financial support or

dependency between 2011 and December 2014/February 2015. Mr Ahmed's answer to what support he gave under cross-examination was vague and unsupported. He claimed that he used to send money and 'asked other persons to help him out'. According to the appellant's examination in chief – he does not know what happened to the £2000 he claimed Mr Ahmed used for his student fees. The evidence was also that the appellant has no bank account and so any money he has been receiving has been cash in hand from his grandfather. There is no evidence of any money transfers from Italy to the UK between 2011 and 2014 either. As it stands I do not find that the appellant continued to be dependent upon Mr Ahmed until after December 2014. Prior to that date – i.e. from 2011 to December 2014 he was self-sufficient."

5.

The judge was not satisfied the appellant is an extended family member as defined in regulation 8(2) (c) of the 2006 Regulations and dismissed the appeal. Permission to appeal was refused by First-tier Tribunal Judge O'Keefe on 26th November 2018 and by Upper Tribunal Judge Grubb on 14th January 2019. Upper Tribunal Judge Grubb stated:

"The First-tier Tribunal (Judge Asjad) dismissed the appellant's appeal against a decision to refuse him a residence card under the Immigration (EEA) Regulations 2006 as an 'extended family member' of his great uncle (brother of his grandmother) an EEA national exercising Treaty rights in the UK. The judge accepted that the appellant was, as required by the Regulations, dependent upon his great-uncle before coming to the UK in 2011; indeed, he also accepted that he was a 'member of the household' of his great-uncle before coming to the UK. However, the judge did not accept that the appellant was dependent upon him or a member of his household after he came to the UK.

There was a 'gap' in the documentary evidence between 2011 and 2014/15 when it could not be established where the appellant lived or that he was dependent on his great uncle. That was a crucial 'gap' in order to establish that the appellant was an EFM in reg 8(2). The judge was not bound to accept the oral evidence was, without documentary evidence, sufficient to discharge the burden of proof on the appellant. Nothing in the grounds persuades me that the judge's decision and findings were arguably irrational or otherwise unlawful and unsustainable."

6.

The appellant issued a claim for Judicial Review challenging the decision of the Upper Tribunal to refuse permission to appeal. Permission to claim judicial review was granted by His Honour Judge Wall QC on 18th June 2019. He observed:

"It is arguable that the FTT looked for a period of unbroken dependency when this was not a legal requirement. If that be right, it is also arguable that the UT should have granted permission to allow this point to be argued.

There is a public interest in further guidance being given as to the meaning of the phrase 'continues to be dependent on him' in Regulation 8(c). This is an important point of principle and one which is not confined to the facts of this case alone."

7.

The decision of Upper Tribunal Judge Grubb refusing permission to appeal to the Upper Tribunal was quashed. Permission to appeal was granted, and the matter comes before us to determine whether there is an error of law in the decision of the F t T Judge, and if there is, to remake the decision.

The Legal Framework

8.

Articles 20 and 21 of the Treaty on the Functioning of the European Union ("the TFEU") grant Union citizens the primary and individual right to move and reside in the territory of other Member States. That right is subject to the limitations and conditions set out in Directive 2004/38/EC of the European Parliament and of the Council ("the Citizens Directive").

9.

A Union citizen's willingness to move to another member state would be greatly reduced if he/she had to leave his/her family behind. The Citizens Directive therefore grants rights of movement and residence to two distinct categories of family member: those who fall within Article 2(2) ("direct family members"), and those who fall within Article 3(2) ("other family members"). This appeal concerns "other family members", or "Beneficiaries" as set out in Article 3 of the Citizens Directive:

"1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

10.

Article 10 provides that the right of residence of a non-Union citizen shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen"; and it sets out the criteria for the grant of such a document.

11.

The 2006 Regulations implemented the Directive in the United Kingdom. In so far as 'other family members' or 'Extended family members', as they are referred to in the 2006 Regulations are concerned, Member States have more limited obligations so far as entry and residence are concerned than the obligations in respect of 'family members. Regulation 8(2) states:

8.— "Extended family member"

(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(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 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.

The meaning of the phrase 'continues to be dependent on him' in regulation 8(c)

12.

Mr De Mello submits that Article 3(2)(a) of the Citizens Directive does not lay down any requirement for there to be a continuous unbroken period of dependency or a requirement that the person is a member of the household continuously, in the country of origin or in the host member State. He refers to the Communication from the Commission to the European Parliament and the Council – COM (2009) 313, that confirms that in order to maintain the unity of the family in a broad sense, the National legislation must provide for a careful examination of the relevant personal circumstances of the applicants concerned, taking into consideration their relationship with the EU citizen or any other circumstances, such as their financial or physical dependence, as stipulated in Recital 6. The communication states that the Directive does not lay down any requirement as to the minimum duration of the dependency or the amount of material support provided, as long as the dependency is genuine and structural in character.

13.

Mr De Mello submits that the 2006 Regulations must be interpreted in accordance with the purpose and objective of the Directive, and national authorities are required to construe the term 'dependency' in accordance with the provisions of the Charter of Fundamental Rights of the EU. He refers to the decision of the CJEU in SM -v- UK C-128/19 and the Supreme Court in SM (Algeria) -v- ECO [2018] [UKSC 9](#). Lady Hale said, at [21]

“ ...decision-makers, whether in the Home Office or in the appellate system, would also have to bear in mind that the purpose of the Directive is to simplify and strengthen the right of free movement and residence for all Union citizens, freedom of movement being one of the fundamental freedoms of the internal market. Having to live apart from family members or members of the family in the wider sense may be a powerful deterrent to the exercise of that freedom.”

14.

Mr De Mello submits that interpreting the 2006 Regulations in light of those principles, if an applicant like the appellant was a dependent or a member of the household of the EEA sponsor in his country of origin, and then ceased to be so, but at some later point the dependency or membership of the household is resurrected, then there is no reason to exclude him from the scope of Article 3(2)(a) of the Citizens Directive. The appellant may cease to be dependent for a period, but the dependency can be resurrected when the occasion arises, but during that period he does not cease to be an extended family member. He submits regulation 8(2)(c) of the 2006 Regulations does not state the dependency and/or membership of household has to be unbroken and uninterrupted. Mr De Mello submits such an interpretation would be inconsistent with the language of Article 3(2)(a) and would offend the spirit of the Citizens Directive.

15.

On behalf of the respondent, Mrs Aboni adopts the respondent's skeleton argument dated 10th February 2020. The respondent submits that as part of the extensive examination of the personal circumstances, the respondent is entitled to consider whether the appellant's presence is of any

relevance to the EEA national's ability to exercise treaty rights. Where an individual has been or is independent, the respondent submits, it is difficult to see a general barrier to the EEA national's ability to exercise treaty rights. Mrs Aboni submits the requirement in regulation 8(2)(c) that the appellant has joined the EEA national in the United Kingdom "and continues to be dependent upon him or to be a member of his household", must be interpreted so that the status quo as to dependency or membership of the household is maintained on arrival in the UK. She submits the purpose of the directive is to facilitate the free movement of the EEA national, and she accepts that would be frustrated if the appellant had continued to be dependent upon the EEA national throughout. Here, the appellant travelled to the UK independently of the EEA national, and there is no evidence that he was dependent upon the EEA national between 2011 and 2014/15. There was no evidence that the EEA national was or would be deterred from exercising treaty rights, but for the ability of the appellant to remain in the UK.

Discussion

16.

Article 3(2) of the Citizens Directive makes provision for applications by a broad category of family members ("other family members") who are dependants or members of the EU citizen's household. The rights given to this category of "other family members" differ from the more extensive rights for family members within Article 2(2) of the Citizens Directive. A host Member State is only under an obligation to 'facilitate entry and residence'.

17.

In Rahman [2013] QB 249 (C-83/11), R, a Bangladeshi national, married an Irish national working in the United Kingdom; three of R's relatives then obtained EEA family permits pursuant to article 3(2) of the Directive to enable them to join R's wife, the relevant EU citizen, in the United Kingdom; after their arrival in the United Kingdom they applied for residence cards to confirm their right of residence, but their applications were refused because they had not shown that they had resided with R's wife in the same Member State before she came to the United Kingdom or that they continued to be dependent on her or were members of her household in the United Kingdom. The Grand Chamber of the ECJ was asked to determine a number of questions on the application of the Article 3(2) and the ability of Member States to impose particular conditions as to the nature or duration of dependence, and conditions applicable to the issue of a residence card under Article 10 of the Directive. As to the nature of the host Member State's obligations under Article 3(2), the Court of Justice said:

"21. ... the fact remains, as is clear from the use of the words 'shall facilitate' in art.3(2) , that the provision imposes an obligation on the Member States to confer a certain advantage, compared with applications for entry and residence of other nationals of third States, on applications submitted by persons who have a relationship of particular dependence with a Union citizen.

22. In order to meet that obligation, the Member States must, in accordance with the second subparagraph of art.3(2) of Directive 2004/38, make it possible for persons envisaged in the first subparagraph of art.3(2) to obtain a decision on their application that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons.

23. As is clear from recital 6 in the preamble to Directive 2004/38, it is incumbent upon the competent authority, when undertaking that examination of the applicant's personal circumstances, to take account of the various factors that may be relevant in the particular case, such as the extent of economic or physical dependence and the degree of relationship between the family member and the Union citizen whom he wishes to accompany or join.

24. In the light both of the absence of more specific rules in Directive 2004/38 and of the use of the words 'in accordance with its national legislation' in art.3(2) of the directive, each Member State has a wide discretion as regards the selection of the factors to be taken into account. Nonetheless, the host Member State must ensure that its legislation contains criteria which are consistent with the normal meaning of 'facilitate' and of the words relating to dependence used in art.3(2), and which do not deprive that provision of its effectiveness."

18.

Insofar as the time at which an applicant is required to be in a situation of dependence in order to meet the conditions of Article 3(2), the Court said:

"32. ... it is to be noted that, as follows from Recital 6 in the directive's preamble, the objective of [article 3(2)] is to 'maintain the unity of the family in a broader sense' by facilitating entry and residence for persons who are not included in the definition of family members of a Union citizen contained in art.2(2) of Directive 2004/38 but who nevertheless maintain close and stable family ties with a Union citizen on account of specific factual circumstances, such as economic dependence, being a member of the household or serious health grounds.

33. It is clear that such ties may exist without the family member of the Union citizen having resided in the same State as that citizen or having been a dependant of that citizen shortly before or at the time when the latter settled in the host State. On the other hand, the situation of dependence must exist, in the country from which the family member concerned comes, at the time when he applies to join the Union citizen on whom he is dependent.

34. In the main proceedings, it is for the national tribunal to establish, on the basis of the guidance as to interpretation provided above, whether the respondents in the main proceedings were dependants of the Union citizen ... in the country from which they have come ... at the time when they applied to join her in the United Kingdom. It is only if they can prove that dependence in the country from which they have come ... that the host Member State will have to facilitate their entry and residence in accordance with art.3(2)

35. In the light of the foregoing, the answer to the third and fourth question referred is that, in order to fall within the category, referred to in art.3(2) of Directive 2004/38, of family members who are 'dependants' of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent."

19.

Finally, as to the particular requirements that a Member State may impose as to the nature or duration of dependence, in order to satisfy itself that such dependence is genuine and stable and has not been brought about with the sole objective of obtaining entry and residence, the Court said:

37. As has been stated in answering the first and the second question, the Member States have a wide discretion as regards the selection of the factors to be taken into account when examining applications for entry and residence submitted by family members of a Union citizen who are envisaged in Article 3(2) of Directive 2004/38.

38.Member States may, in the exercise of that discretion, lay down in their legislation particular requirements as to the nature and duration of dependence, in order in particular to satisfy themselves

that the situation of dependence is genuine and stable and has not been brought about with the sole objective of obtaining entry into and residence in the host Member State.

39 It is necessary however, as has been held in paragraph 24 of the present judgment, that those requirements be consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of Directive 2004/38 and do not deprive that provision of its effectiveness.

40 Accordingly, the answer to the fifth question referred is that, on a proper construction of Article 3(2) of Directive 2004/38, the Member States may, in the exercise of their discretion, impose particular requirements relating to the nature and duration of dependence, provided that those requirements are consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of the directive and do not deprive that provision of its effectiveness.

20.

As Mr De Mello acknowledges, the decision of the Grand Chamber of the CJEU does not directly provide the answer to the question that we are considering. What is clear is that Article 3(2) of the Citizens Directive does not oblige Member States to accord a right of entry and residence to persons who are family members, in the broad sense, dependent on a Union citizen. The provision imposes an obligation on the Member States to confer a certain advantage, compared with applications for entry and residence of other nationals of third States, on applications submitted by persons who have a relationship of particular dependence with a Union citizen.

21.

It is uncontroversial that the refusal of a host Member State to authorise ‘other family members’ of an EU citizen to join them in the host Member State is likely to discourage an EU citizen from continuing to reside there and encourage him to leave in order to be able to lead family life in another Member State or in a third country. The purpose and justification of the ancillary rights granted to other family members of union citizens is therefore to support the exercise by those union citizens of their own rights, if needs be, by overriding domestic immigration law. That is why, to qualify, the relatives must be dependent upon the EEA national, or be a member of his household.

22.

It is useful to start with the wording of regulation 8(2)(c) itself. The regulation requires that “ 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”. The first requirement is that the applicant “satisfied the condition in paragraph (a) . The applicant must have satisfied the requirement that the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household. The focus is upon the past and prior dependency or membership of the household. Here, the FtT judge found the appellant was a dependent of the EEA national, and part of the EEA national’s household in Bangladesh until the appellant left for the UK in 2011. The second requirement is that the appellant “has joined the EEA national in the United Kingdom”. In Metock and Others -v- Minister for Justice, Equality and Law Reform C-127/08, the CJEU confirmed, albeit in the context of ‘family members’, nothing in the Citizens Directive made its application conditional upon the applicant family member of a Union citizen having previously resided in a Member State. The CJEU held the Citizens Directive is to be interpreted as applying to all nationals of non-Member States who were family members of a Union citizen, irrespective of where they had resided prior to their arrival. It does not matter whether it is the EU citizen or the relative of the EU citizen who arrives first in the United Kingdom.

23.

It is the interpretation of the third strand of regulation 8(2)(c); “ and continues to be dependent upon him or to be a member of his household” , that is at the heart of the appeal before us. The word “continues” as an ordinary word of the English language is to carry on, keep up, maintain, go on with, or persist in an action. We acknowledge that ‘to carry on’ could also include to ‘resume from a point of suspension or interruption’.

24.

In our judgement the context is important. In considering the interpretation of the words “and continues to be dependent..” , in this context we must give effect to the purposes of the Directive which the 2006 Regulations transpose. The material recitals to the Citizens Directive are recitals 1, 5 and 6. The first objective is to promote the free movement of Union Citizens. Recital 5 records that the right, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality.

25.

The obligations on host member states in respect of ‘other family members’ are explained in recital (6) to the Citizens Directive as follows:

“ In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.”

26.

The obligations in respect of ‘other family members’ under Article 3(2) are clearly much more restricted than the obligations and rights conferred on family members under Article 2. Whereas the Directive requires that the primary and individual right enjoyed by EU citizens to move and reside freely within the territory of Member States shall also be granted to family members as defined within Article 2(2), by contrast, in the case of other family members who fall within the scope of Article 3(2), the Directive imposes an obligation on Member States to “facilitate” their “entry and residence”. In Rahman , the CJEU made clear, at [32], that the objective of that provision is to ‘maintain the unity of the family in a broader sense’ by facilitating entry and residence for persons who are not included in the definition of family member contained in Article 2(2) of Directive 2004/38 but who nevertheless maintain close and stable family ties with a Union citizen on account of specific factual circumstances, such as economic dependence (our emphasis) , being a member of the household or serious health grounds. In our judgment, the recognition in Rahman that what Article 3(2) is seeking to promote is an ability to maintain close and stable family ties with a Union citizen on account of specific factual circumstances, such as economic dependence, is of some significance. It suggests that at least one facet of stable family ties, is economic dependence.

27.

Member States have a wide discretion as regards the selection of factors to be taken into account when examining applications for entry and residence submitted by ‘other family members’, and in the exercise of that discretion Member States may lay down particular requirements as to the nature and

duration of dependence, in order to satisfy themselves that the situation of dependence is genuine and stable.

28.

Regulation 8(2)(c) of the 2006 Regulations requires that an applicant continues to be dependent upon the EEA national or to be a member of his household. Thus, the applicant may satisfy the requirement if he either continues to be dependent upon the EEA national or continues to be a member of the EEA national's household. If, as the appellant contends, all that is necessary is for the appellant to establish past dependency so that the condition in paragraph 8(2)(a) is satisfied, and present dependency or membership of the EEA national's household, the Regulations would have used the words "and is dependent.." rather than the words "and continues to be dependent" in regulation 8(2)(c).

29.

The language of Article 3(2) of the Citizens Directive and in particular the requirement to 'facilitate' entry and residence for any other family members who 'are dependents or members of the household of the Union citizen having the primary right of residence, establish a category of person who are given privileged treatment in order to promote the objectives of free movement and residence by EU citizens. The refusal to grant 'other family members' a right of residence where there has been historic, but lapsed or broken dependency or membership of a household, does not in our judgment, undermine the objective of removing obstacles to the Union citizens freedom movement and residence rights. The refusal to grant a right of residence in such circumstances does not discourage or act as a deterrent to the Union citizen from continuing to reside in the host Member State. It is important to highlight that the policy of the 2004 Directive, as Mr De Mello accepts, is not one of family reunion.

30.

In our judgment, the requirement for there to be continued unbroken dependency is consistent with the rationale that the Directive seeks to preserve stable family ties with a Union citizen, where there has been stable continued economic dependence. It follows that in our judgment, in this context, the words "and continues to be dependent" in regulation 8(2)(c) of the 2006 Regulations, properly characterised, require an applicant to establish that there has not been a break in their dependency on the EEA National sponsor.

The appeal before us

31.

The appellant was found to have been dependent upon the EEA national in the past, but there was no evidence before the FtT judge that the appellant had been in any way dependent upon the EEA national between 2011 and 2014/15. There was a significant and entirely unexplained break in the appellant's dependency on the EEA national. The judge notes, at [9], both the appellant and the EEA national were noticeably silent about where the appellant was living between 2011 and December 2014/February 2015. The Judge found the appellant had not 'continued to be dependent' upon Mr Ahmed and the appellant was self sufficient from 2011 to December 2014.

32.

There had clearly been a break in the appellant's dependency upon the sponsor following the appellant's departure from Bangladesh. The ability of Mr Chowdhury to exercise his rights of free movement was not in any way dependent upon the ability of the appellant to remain in the UK. The appellant arrived in the UK independently of Mr Chowdhury and has been able to live in the UK for

several years without being a dependent of Mr Ahmed. In our judgement it was open to the Judge to dismiss the appeal for the reasons given by him.

33.

Finally, we simply observe that at the hearing before us we were provided with the respondent's report regarding the events leading to the cancellation of the appellant's leave to enter on 1st March 2011. During the interview, the appellant claimed that he intended to study an ACCA course at London Denning College for three years and his father paid £2,000 for the course. It does not appear that a copy of that report was provided to FtT Judge Asjad, when the judge was considering the extent to which the appellant was a dependent of the EEA national.

NOTICE OF DECISION

34.

The appeal is dismissed

Upper Tribunal Judge Mandalia

23rd March 2020