IN THE ASYLUM AND IMMIGRATION TRIBUNAL

at Hatton Cross

LS (EEA Regulations 2000 - Meaning of 'Dependent') Sri Lanka [2005] UKAIT 00132

Heard: 21.09.2005
Signed: 21.09.2005
Sent out: 29.09.2005

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2004

Before:

John Freeman (a senior immigration judge) and
Michael Oakley (an immigration judge)

Between:

appellant

and:

Secretary of State for the Home Department,
respondent

Mr T Mukherjee (counsel instructed by Wandsworth & Merton Law Centre) for the appellant
Mrs L Tedeschini for the respondent

DETERMINATION AND REASONS

This is an appeal by a citizen of Sri Lanka against refusal of a residence permit as the dependant of an European Union citizen on 29 October 2004. The appellant's aunt is a German citizen who is exercizing her treaty rights in this country: we shall call her the sponsor. The other relevant dates are:

2.2.1979	appellant born in Sri Lanka
1979.1984	appellant lives with sponsor in Sri Lanka
1984	sponsor goes to Germany
1998	sponsor becomes German citizen; moves to United Kingdom
03.11.1999	appellant comes to United Kingdom
01.2004	appellant begins to live with sponsor in United Kingdom

2. By regulation 10.4 of the Immigration (European Economic Area) Regulations 2000:

The conditions [for the issue of a residence permit to a dependant] *are that the person [is a relative of an EEA national or his spouse and]-*

a. is dependent on the EEA national or his spouse;
b. is living as part of the EEA national's household outside the United Kingdom; or
c. was living as part of the EEA national's household before the EEA national came to the United Kingdom.

These conditions are alternatives: see **PB [2005] UKIAT 00082** § 10.

3. A number of points were taken in the refusal letter, but Mrs Tedeschini helpfully confined herself before us to the following issues:

a) During the period 1979-84, while the appellant and the sponsor were living in the same house as part of a typical extended family, was he living as part of her household in terms of paragraph 10.4c?

b) At the date of the decision, was he dependent on the sponsor in terms of paragraph 10.4a?

It is common ground that nothing turns on paragraph 10.4b, since that deals with cases where the claimant is seeking to join the sponsor from outside this country. We shall deal first with issue b).

4. The evidence of the appellant and the sponsor, substantially unchallenged, is that since January 2004 he had been staying with her, not making any contribution to the household, but not getting anything from her beyond his board and lodging. That we suspect is not untypical for a family member from a developing country who has not yet succeeded in getting permanent residence in the European Union, when staying with another who has. Then in April last year the Home Office forbad the appellant to work: he had lost his asylum appeal, and been refused permission to appeal by the Immigration Appeal Tribunal. Since then all the appellant's financial needs have been met by the sponsor: either she gives him money or takes him shopping and pays herself, and that was the state of affairs at the date of the decision last October.

5. Mrs Tedeschini suggested that "dependent" in regulation 10.4a must be read in the light of the purpose of the regulations as a whole, which she suggested was to remove any brake on the freedom of movement of European Union citizens. That is undoubtedly right; and if there were any room for doubt as to the meaning of the word in that context, the purpose might help to clear it up. Mrs Tedeschini could not suggest a precise meaning for the word in context; but she was inclined to suggest that it should be read as requiring something like a dependency of necessity. (She had also suggested, with understandable lack of enthusiasm, that the appellant might have been able to get NASS support, rather than relying on his aunt; but when the history of his asylum claim was given, she withdrew that point).

6. Even if dependency of necessity were required, it would in our view be arguable that it was satisfied in this case: it was because British legislation prevented the appellant from working that he had to rely on the sponsor. However, the only authority to which we were referred by either side as to the meaning of 'dependent' in the European legislation was (by Mr Mukherjee) **Lebon (ECJ case 316/85**, judgment 18 June 1987). **Lebon** dealt not with freedom of movement, but with entitlement to benefits under regulation 10 of Regulation 1612/68: however 1612/68 was the foundation for our 2000 Regulations (see **PB 05-82** § 5), though it is cited as 1612/98 at § 4). There is in our view no reason to interpret 'dependent' in different ways for the purposes of the same piece of European legislation. What **Lebon** decided, on the point in issue (see ruling 2) was this:

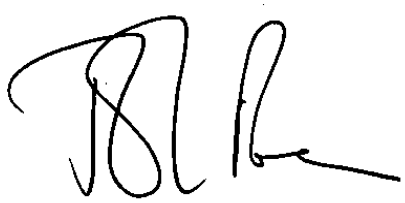
The status of dependent member of a worker's family …is the result of a factual situation, namely the provision of support by the worker, without there being any need to determine the reasons for recourse to the worker's support.

7. While strictly nothing we say on this point is necessary to our decision, if the withdrawal of permission to work meant that the appellant was on any conceivable test dependent on the sponsor by the date of the decision under appeal, we have to say that in our view **Lebon** means that, if a claimant is at the date of the decision dependent on a European Union citizen exercizing treaty rights here as an ordinary matter of fact (and clearly financial dependency is what is meant here), then there is no room for doubt or for going into the reasons for the dependency. It follows that this appeal must be allowed.

8. We have to confess to some relief in reaching that conclusion by this route, since what had been left clear and logical in **PB 05-82** on the interpretation of regulation 10.4c has been made much less so by the view the Home Office have chosen (as Mrs Tedeschini told us) to take on it. The Tribunal in **PB 05-82** took the view, for good reasons including the purpose of the regulations, that "…*was living …before* …" means in effect 'immediately before', so that the benefit of the regulations is only taken by those who might otherwise be deterred from exercizing their treaty rights by not being able to bring current members of their households to this country.

9. The Home Office, for reasons best known to themselves, have not adopted this view, but have taken the position that any living in the same household (at least for more than a minimal time) at however remote a date, is enough to satisfy the requirements of this regulation. The potential absurdity of this construction would be well illustrated by the present appeal, if it had to be allowed on the sole basis that this appellant was entitled to a residence permit in 2004 because he had lived with the sponsor as part of an extended family unit in 1979-84. We think the Home Office would find they had a great deal of explaining to do to the public, if it became known that they had resiled from a Tribunal decision in their favour on this point, and preferred their own interpretation, with all its potential absurdity. We suggest they give the point some hard thought, before another case comes up which turns on it alone.

Appeal allowed



John Freeman
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