



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/06939/2014

Appeal Numbers:

IA/06956/2014

IA/07092/2014

THE IMMIGRATION ACTS

Heard at Field House

On 20th October 2014

**Decision & Reasons
Promulgated**

On 24th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MISS AFSHAN NOUREEN
MISS NUSRAT
MR ALI ADNAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Iqbal, Iqbal Law Chambers Ltd

For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan and appealed against the refusals of the Secretary of State dated 21st July 2014 and 23rd January 2014 to confirm their right to reside in the UK as

dependants of the EEA sponsor and national Miss Edita Umantaite.

2. Judge Pacey dismissed all of the appeals and an application for permission to appeal was made on the basis that the First-tier Tribunal Judge had failed to acknowledge the fact that the male appellant in question was one of the dependants and did not submit a witness statement or give oral evidence although this was referred to in paragraph 3 of the judge's determination. It was submitted in the application for permission to appeal that the First-tier Tribunal Judge had not only relied on the evidence given by the EEA national sponsor's spouse but considered him as the male appellant and therefore the determination contained a material error of fact.
3. Further the judge had failed to consider or provide adequate reasoning as to the raising of the unfairness issue as to why the appellant's real brother was issued with a residence card on the same circumstances and the judge had unfairly shown an unwillingness to attach any weight to that unfairness argument and had failed to give adequate reasons in that respect.
4. The judge had failed to give reasons as to why the appellants' case did not fall within the ambit of **Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79**.
5. Further the appeal hearing was rushed.
6. I am not persuaded that there is any merit in the contention that the judge did not take on board the fact that the brother had been granted a right to reside. As the judge stated at paragraph 8 *"I do not know what evidence was provided in relation to the brother."*
7. It was clear that the application had been granted to the brother but as stated by the judge he did not know what evidence was provided in relation to the dependency and/or connection between the EEA sponsor and the brother. I therefore consider that there is no merit in this ground at all.
8. The judge made reference to the male appellant instead of the sponsor giving evidence. I can see that no reference was made to the evidence of the sponsor's husband and indeed there was a witness statement to that effect.
9. I therefore consider this to be a piece of evidence which is critical to the assessment of this appeal. It is clear that the judge confused the male appellant with the husband of the sponsor and could not remember what evidence was given by which witness and there was no reference to the witness

statement of the sponsor's husband in the determination. That is a material error of law.

10. I set aside the determination of Judge Pacey. Bearing in mind the nature and extent of the findings to be made, I remit the matter to the First-tier Tribunal for a fresh hearing.

Signed
2014

Date 10th November

Deputy Upper Tribunal Judge Rimington