



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/06288/2019**

**Appeal Number:
EA/06289/2019
EA/06290/2019
EA/06291/2019 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34 (P)
On 19 April 2021**

**Decision & Reasons
Promulgated
On 28 April 2021**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**SHABANA KOUSAR + 3
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

**Representation (by way of written submissions)
For the appellant: None received
For the respondent: None received**

Background

1. This appeal comes before me following the grant of permission to appeal to the respondent by Upper Tribunal Judge Martin sitting as Judge of the First-tier Tribunal on 3 February 2021 against the determination of First-tier Tribunal Judge O'Garro, promulgated on 12 January 2021 following a CVP hearing at Hatton Cross on 16 December 2020. For convenience, I shall continue to refer to the parties as they were before the First-tier Tribunal.
2. The main appellant is the mother of the three minor appellants and they are all nationals of Pakistan. They seek to join their EEA sponsor, Abdul Rauf. The husband/father of the appellants is Abdul Sani Nasir and he is also in the UK. He is the brother of the sponsor and obtained a family permit as an extended family member.
3. The application was refused on 26 October 2019 under the EEA Regulations 2016.
4. The judge heard oral evidence from the sponsor who maintained that he continued to support the appellants after his brother (husband and father of the appellants) came to the UK. She found that despite the fact that the latter was employed in the UK, the appellants were still dependent upon the sponsor because it was not known whether Mr Nasir's contributions met their essential living needs. She concluded that they, therefore, qualified for family permits under reg. 8(2).
5. The respondent successfully sought permission to appeal. She argued that the judge had failed to establish whether the appellants retained dependency as a necessity rather than out of choice. She argued that there was no clarification as to why the sponsor continued to send funds and that no assessment was undertaken of the expenses of either Mr Nasir or the appellants. As such it could not be determined that the sponsor's funds were essential.
6. The matter would ordinarily have then been listed for a hearing but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and directions were sent to the parties on 9 February 2021. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

7. Neither party has of today's date responded to the directions. I am satisfied that they were properly served on the respondent, the appellant c/o her sponsor's address in the UK and on her legal representatives.
8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules) and the judgment of Osborn v The Parole Board [2013] UKSC 61. I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
9. I have had careful regard to all the evidence. I consider that a full account of the arguments are set out in the papers before the Tribunal and that the issues to be decided are uncomplicated. There are no matters arising from the grounds which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellants and consider that a speedy but fair determination of this matter is in their best interests. Neither party has raised any objections to a paper determination. I am satisfied that I am able to fairly and justly deal with this matter without a hearing and now proceed to do so.

Discussion and conclusions

10. I have considered all the evidence, the grounds for permission and the judge's determination.
11. The respondent complains that the judge failed to undertake an assessment of the needs of the appellants and that without that she could not properly determine whether or not they required the sponsor's contributions as well as those from Mr Nasir to meet their essential needs. The respondent is right to criticise the judge for that failing. In her determination the judge correctly sets out the test as being whether the appellants require the material support of the EEA sponsor to meet their essential living needs (at 27). However, she also states that the sponsor did not explain why he continued to send money to the appellants once his brother started working (at 26) and notes the

absence of evidence before her of the appellants' living expenses and whether they were met by Mr Nasir's contributions (at 28) or of Mr Nasir's own costs (at 29). Without an assessment of such matters, it was not possible to reach a positive decision under reg. 8(2) and the judge erred in so doing.

12. Evidence will be required of the appellants' living costs and whether they can be met by Mr Nasir alone or whether the sponsor's help is needed before the matter of dependency can be fairly determined.

Decision

13. The decision to allow the appeal under the Regulations is set aside.
14. A fresh decision shall be made by another judge of the First-tier Tribunal at a date to be arranged.

Anonymity

15. No request for an anonymity order has been made at any stage and I see no reason to make one.

Directions

16. The First-tier Tribunal shall issue directions in due course.

Signed

R. Kekić
Upper Tribunal Judge
Date: 19 April 2021