



Upper Tribunal

(Immigration and Asylum Chamber)
[UI-2021-000984]

Appeal Numbers: EA/05997/2020

EA/05999/2020 [UI-2021-000992]

EA/06415/2020 [UI-2021-000995]

EA/06416/2020 [UI-2021-000997]

EA/06417/2020 [UI-2021-001001]

THE IMMIGRATION ACTS

Decided without a hearing

Decision & Reasons Promulgated
On the 25 April 2022

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**PERVAIZ ASLAM
YASMIN PERVAIZ
MUHAMMAD ISA
MUHAMMAD MUSA
MUHAMMAD UMER
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

**DECISION AND REASONS PURSUANT TO RULE 40(3) OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Introduction

- 1.** The Appellants are all related: the first two are husband and wife and they are the parents of the remaining three. They are the extended family members of an EEA national residing in the United Kingdom. They applied

for EEA Family Permits under the Immigration (European Economic Area) Regulations 2016. These applications were refused on 4 November 2020 (in respect of the first two Appellants) and 11 December 2020 (in respect of the remaining Appellants). The Appellants appealed to the First-tier Tribunal.

2. The First-tier Tribunal (Judge Bennett) dismissed their appeals in a decision promulgated on 21 October 2021. At [22] and [23], the judge found that the Appellants were dependent on the EEA national for their essential living costs. Despite this, he went on to conduct an analysis of additional matters and, in reliance on this, dismissed the appeals. The Appellants sought, and were granted, permission to appeal.
3. By her rule 24 response, dated 17 January 2022, the Respondent conceded that the judge had materially erred in law and that his decision should be set aside. In addition, she accepted that in light of the findings made at [22] and [23] of the judge's decision, the Appellant's appeals should be re-made and allowed.
4. On review of the file I deemed it appropriate to issue a directions notice to the parties, seeking their views on whether there needed to be a hearing, or whether these appeals could be fairly determined 'on the papers' and potentially under rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, which provides that the parties can consent to a decision being made without accompanying reasons.
5. Through email responses, it was clear that the parties consented to the matter been dealt with without a hearing. Whilst it was not expressly stated that the Tribunal should proceed under rule 40(3), that was in my view implicit in the parties' positions.
6. In all the circumstances, it is appropriate to proceed under that particular rule. Even if it were not, the summary conclusions set out below are sufficient to deal with these appeals on a reasoned basis.

Conclusions

7. The Respondent was quite right to have conceded the error of law issue in her rule 24 response. The judge expressly found at [22] and [23] that the Appellants were all dependent on the EEA national to the extent relevant to the question of dependency under regulation 8 of the 2016 EEA Regulations. That should, in the circumstances of these cases, have been the end of the matter.
8. The judge's additional and, with respect, somewhat complicated analysis of additional matters, was plainly erroneous.

- 9.** In the absence of any suggestion that the Appellants' circumstances have materially changed between the judge's decision and now, the findings at [22] and [23] are sufficient for these appeals to be re-made and allowed, as contended for in the rule 24 response.

Anonymity

- 10.** The First-tier Tribunal made no anonymity direction. There is no sound reason for the Upper Tribunal to make any such direction and I do not do so.

Notice of Decision

- 11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**
- 12. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**
- 13. I re-make the decision by allowing the appeals under the Immigration (European Economic Area) Regulations 2016.**

Signed: H Norton-Taylor

Date: 17 March 2022

Upper Tribunal Judge Norton-Taylor