



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-006142  
UI-2022-006145, UI-2022-006146  
UI-2022-006147, UI-2022-006148  
First-tier Tribunal Nos:  
EA/08395/2021  
EA/03532/2022, EA/03537/2022  
EA/03536/2022, EA/03539/2022

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On the 07 December 2023

Before

**UPPER TRIBUNAL JUDGE KEBEDE**  
**DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

Between

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**SAGHIR UN NISA**  
**HIRA SALEEM**  
**MUHAMMAD KASHIF**  
**MOMINA SALEEM**  
**MUHAMMAD SHAHRUKH**  
**(Anonymity order not made)**

Respondents

**Representation:**

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer  
For the Respondents: Ms G Patel, instructed by Deo Valente Solicitors LLP

**Heard at Manchester Civil Justice Centre on 28 November 2023**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeals of Saghir Un Nisa and her four children against the respondent's decision to refuse their applications for an EEA Family Permit under the Immigration (European Economic Area) Regulations 2016 as the extended family members of an EEA national.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and Saghir Un Nisa and her four children as the appellants, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellants are nationals of Pakistan born on 20 December 1974, 26 March 1997, 30 August 1999, 19 August 2003 and 19 August 2003 respectively. The first appellant is the brother of the sponsor, Azhar Mehmood Begum, a Spanish national. The sponsor is the uncle of the four other appellants.

4. The appellants applied for EEA Family Permits on 24 December 2020. Their applications were refused on 18 March 2021 on the grounds that the respondent could not be satisfied, on the evidence produced, that they were dependent upon their sponsor. The respondent noted that the appellants had failed to provide evidence of their financial position to show that without the financial support of the sponsor their essential living needs could not be met and that they had failed to provide evidence of their residence, accommodation or living arrangements to show that they were reliant upon their sponsor for a place to live or resided as a member of his household. The respondent noted that the appellants claimed to have been financially dependent on the sponsor following the death of the first appellant's husband in 2007, but considered that the limited evidence of money remittances between July 2019 and December 2020 was insufficient to show that they were financially dependent on the sponsor. The respondent noted that the evidence submitted stated that the sponsor earned between £332 and £452 per week from his employment, and that the appellants had not provided any evidence of his existing family and financial commitments and responsibilities in the UK, such that the respondent could not be satisfied that the sponsor was able to support the family of five while meeting his own needs and the needs of any family members already dependent upon him. The respondent was accordingly not satisfied that the appellants were extended family members of the sponsor in accordance with regulation 8 of the EEA Regulations and was not satisfied that they met all of the requirements of regulation 12 of the EEA Regulations in order to be issued with EEA family permits.

5. The appellants appealed against that decision and their linked appeals came before First-tier Tribunal Judge Evans on 27 October 2022. Judge Evans allowed the appellants' appeals in a decision promulgated on 7 November 2022. On the basis of the sponsor's oral evidence and the documentary evidence showing regular payments being made by the sponsor to the appellants for over three years, the judge accepted that the appellants were dependent upon the sponsor to meet their essential needs and he accordingly allowed the appeals under the EEA Regulations.

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the sole ground that the judge had erred by failing to make findings on the sponsor's ability to support the appellants in the UK, should they be granted family permits, in accordance with regulation 13(3) of the EEA Regulations.

7. Following a grant of permission, the matter came before Upper Tribunal Judge Kebede, sitting alone, on 20 September 2023, to determine whether or not Judge Evans had erred in law in his decision. Mr McVeety relied upon the submission that the judge had failed to make findings on regulation 13(3) of the EEA Regulations 2016 and had therefore materially erred in his decision. Ms Patel submitted that that was a matter addressed and determined by the judge. She submitted that the judge's summary of the evidence and his observations and findings at [5], [10], [15] and [24] showed that he had considered the relevant matters and, further, that the evidence clearly showed that the sponsor's income was sufficient to support the appellants.

8. In a decision promulgated on 20 September 2023, the following observations were made:

“12. ... it seems to me that the judge’s observations and findings, as relied upon by Ms Patel, were in relation to the sponsor’s ability to support the appellants in Pakistan and not in the UK. Whilst the sponsor may have addressed the relevant matter in his statement at paragraphs 6(c), 17 and 18, I have to agree with Mr McVeety that the judge did not engage with the matter himself or make any findings in that regard. That is particularly evident from the judge’s comments at [24] of his decision, where he referred to it being cheaper to live in Pakistan than in the UK, a clear indication that his conclusion was that the funds remitted were sufficient for the appellants to live on in Pakistan. Accordingly I reject Ms Patel’s assertion that the judge considered the sponsor’s ability to support the appellants in the UK and I agree with the respondent that the judge did not resolve the issue of whether the requirements of regulation 13(3) were met.

13. Mr McVeety raised the question of whether regulation 13(3) was in fact applicable in family permit cases, in any event, a matter which Ms Patel had not raised but which Mr McVeety advised was a matter being considered by the Upper Tribunal in another case. Clearly, if regulation 13(3) did not apply in such cases, any failure by the judge to consider the sponsor’s ability to support the appellants in the UK without access to public funds may not have been material and there would be no need for a further hearing. If, on the other hand, regulation 13(3) was applicable, there was clearly a material failure by the judge and the decision had to be set aside and re-made in order for findings to be made on the issue.

14. In the circumstances, it seems to me that the appropriate way to proceed is for there to be a resumed hearing on a date to be notified to the parties, after a decision has been made by the Upper Tribunal on the relevance of regulation 13(3) in that other case, so that the matter may then be concluded. If relevant, this Tribunal can then make findings on the sponsor’s ability to support the appellants in the UK and consider whether the requirements of regulation 13(3) are met. The parties should therefore be prepared to address that matter and all relevant evidence to enable them to do so must be filed and served in accordance with the directions below.”

9. The matter was then listed for a further hearing in the Upper Tribunal and came before us, sitting as a panel. It transpired that the case to which Mr McVeety had previously referred as being heard in the Upper Tribunal had since been decided but had not been reported. On the basis of the views expressed in that unreported decision, however, Mr McVeety was content to concede that Regulation 13(3) was not applicable to the appellants since it referred to those who had already entered the UK. He accepted that, since that was the sole ground of challenge to Judge Evans’ decision, there was no material error of law in the judge’s decision and the decision should therefore stand.

10. In the circumstances, and in light of Mr McVeety’s concession, we accept that Judge Evans was entitled to conclude that the appellants were dependent upon the sponsor for their essential needs and to conclude that they met the conditions in regulation 8 and 12 to show that they were the extended family members of the sponsor and were entitled to family permits on that basis. The judge was accordingly entitled to allow the appeals on the basis that he did.

### **Notice of Decision**

11. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to allow the appeals stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

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(EA/08395/2021, EA/03532/2022, EA/03537/2022, EA/03536/2022 & EA/03539/2022)

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

28 November 2023