



**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: **UI 2023 -003635 & UI 2023 -003636**

**EA 09485 2022 & EA 09490 2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 14 November 2023**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL  
G A BLACK**

**Between**

**MRS SHABANA AZEEM  
MR MUHAMMAD IQRAR**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

NO ANONYMITY ORDER MADE

**Representation:**

For the Appellant: Mr H Malik (Counsel instructed by Nasim & Co )

For the Respondent: Ms S McKenzie (Home Office Presenting Officer)

**Heard at Field House on 01 November 2023**

**ERROR OF LAW DECISION AND REASONS**

1. This is an appeal against the decision issued on 22 June 2023 by First-tier Judge Suffield - Thompson ("the Judge") which dismissed the appellants appeal against a decision of the respondent refusing their applications for family permits under EUSS as dependent relatives of the sponsor.

2. The appellants, Shabana Azeem and Muhammad Iqrar, are married and are citizens of Pakistan. Their dates of birth are respectively 16.3.1979 and 8.1.1985. The sponsor is the mother of Shabana Azeem.

3. In the refusal letter the respondent set out the requirements to be met under Regulation 9 of the EEA Regulations, that it needed to be shown that residence there was genuine with genuine family during the time of the joint residence and not for the purpose of circumventing immigration control. The respondent refused the application because the appellant failed to provide evidence to show that the sponsor was self employed in Ireland and thus a “qualified person”. Further requests were made for further information from the appellant. The letter stated that documents provided failed to show that the payments into the sponsor’s accounts were business related. The respondent was not satisfied that the BC was resident in the EEA host state as a “qualified person”.

4. The Judge determined the appeals on the papers. At [12 &13] the Judge rehearsed two grounds for refusal in terms of Regulation 9, whether the sponsor was a qualified person and joint residence. At [14] he considered the documentation adduced to demonstrate self employment of the sponsor and found that it was genuine.

5. The second reason for refusal identified by the Judge at [17] was that they had to show genuine residence in the host country. The Judge found that there was no evidence to show that they were living with the sponsor, such as tenancy agreement, GP notes etc. [19] This was the issue upon which the Judge dismissed the appeal.

### **Grounds of appeal**

6. The grounds of appeal argued that the Judge took into account reasons that were not included in the refusal letter and that lead to unfairness. In the alternative the Judge failed to take into account evidence that showed that there was joint residence.

### **Permission to appeal**

7. Permission was granted in August 2023 in terms that it was arguable that the Judge considered an issue of joint residence that was not of concern to the respondent and this was unfair to the appellant who had no notice of this.

### **Submissions**

8. At the hearing before me Mr Malik argued that the Judge had considered an issue that had not specifically been raised by the respondent namely the question of joint residence. This was the issue that formed the basis for dismissing the appeal. The appellants had provided evidence of a tenancy agreement in any event. The Judge had given the appellant’s no opportunity to respond to the issue of joint residence as this had not been raised by the respondent in the refusal letter.

9. Ms McKenzie responded that the Judge was entitled to consider all the issues under Regulation 9. She accepted that the tenancy agreement was adduced, but did not state where the residence was located. She further argued that Regulation 7 had not been met.

### **Discussion and conclusion**

10. The terms of the refusal letter made general reference to Regulation 9 and set all the requirements of the Regulations that need to be met. It is clear that the applications were refused specifically on the grounds that the sponsor had not shown adequate evidence of being self-employed and was a “qualified person”. The Judge made a positive finding in this regard. As the matter was determined on the papers the appellants had no opportunity to respond to any additional concerns raised by the Judge and in the event that these were not issues specifically identified in the refusal it created unfairness to the appellant, who had no notice that this issue would be raised.

11. Even if residency was a concern, which I do not find, there was evidence supporting the application and in the bundle of a tenancy agreement. The Judge made no reference to this evidence which was relevant to the issue of joint residence. The grounds of appeal confirm that this was provided in the application and this was agreed by Ms McKenzie. I am satisfied that the tenancy agreement did exist and demonstrated that the Appellants and Sponsor were residing genuinely together during the relevant qualifying period. The agreement was dated 03 September 2019 and includes the Sponsor’s name, Shabana and Muhammad.

12. There is a material error of law in the decision which shall be set aside.

### **Re making**

13. I go on to remake the decision and allow the appeal. On the evidence that was before the First-tier Tribunal and the findings made the concerns raised in the refusal letter were addressed and met. The Judge found that the sponsor was self-employed and was therefore a qualified person. No issue was raised in the refusal letter as to Regulation 7 nor as to joint residence.

### **Decision**

The appeal is allowed.

Signed  
2023

Dated 9 November

GA Black  
Deputy Judge of the Upper Tribunal

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