



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003137
UI-2011-003138
UI-2022-003139
UI-2022-003140
First-tier Tribunal No: EA/53113/2021
EA/53114/2021
EA/53115/2021
EA/53116/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AN ENTRY CLEARANCE OFFICER

Appellant

and

**SAMINA KOUSAR
JAVED AKHTAR
NUMAN WALI
SULEMAN ALI
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Bates, a Senior Home Office Presenting Officer.
For the Respondent: Mr Zane Malik KC instructed by K & A Solicitors.

Heard at Manchester Civil Justice Centre on 1 July 2024

DECISION AND REASONS

1. The Entry Clearance Officer (ECO) appeals with permission a decision of First-tier Tribunal Judge Lloyd-Lawrie ('the Judge'), promulgated following a hearing at Manchester on 25 April 2022, in which the Judge allowed the above respondent's appeals against the refusals of their applications for a family permit under Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations) as extended family members of a Mr Ansar Mukhtar ('the Sponsor').

2. The first respondent, Samina Kausar is the sister of the Sponsor. The second respondent is her husband, and the other two respondents are their sons. All are citizens of Pakistan.
3. The Judge records the above respondent's case being that they are reliant upon the Sponsor to meet their essential needs, as the second respondent worked to support the family until September 2016 when he had been working in Dubai but fell ill, as a result of which his visa was cancelled by his employer, he returned to Pakistan, and had not worked since. The above respondent's claim is that the support from the Sponsor is the only financial support they receive, and that they live in a house owned by the Sponsor.
4. The Judge records at [6] no dispute concerning the claimed relationship or that the Sponsor as a qualifying person.
5. The Judge's findings are set out from [7] of the decision under challenge. The Judge finds the Sponsor to be an honest and credible witness who previously sent money to his sister but that he had fully taken over supporting the family in 2016, and that they had moved into a house owned by him in 2019, after the application date but before the date of decision. The Judge finds the money that was sent was in order to pay for essential living costs [8].
6. The Judge finds the evidence shows that the above respondent's received financial support from the Sponsor from 2016 and continuing, such that the test for dependency was satisfied. On that basis the appeal was allowed.
7. The ECO sought permission to appeal asserting the Judge erred in law in allowing all four linked appeals under the 2016 Regulations as the applications had been made and refused under Appendix EU (Family Permit) of the Immigration Rules and, therefore, the rights of appeal for the appellant's derived from Regulation 8 of The (Immigration Citizens' Rights Appeals) (EU exit) Regulations 2020 (the 2020 Regulations) and not Regulation 36 of the 2016 Regulations. The grounds assert the Judge allowed the appeals on an impermissible basis and failed to address the issues raised in the refusal notice made under Appendix EU (Family Permit) despite being raised in the Review document dated 9 March 2022.
8. Permission to appeal was refused by another judge the First-tier Tribunal but renewed to the Upper Tribunal where it was granted by Upper Tribunal Judge Kamara on 16 September 2022, the operative part of the grant being in the following terms:
 2. It is arguable that the judge may have erred in allowing all four appeals under the 2016 Regulations in circumstances where three of the applications were made under Appendix EU of the Rules. It is further arguable that the judge failed to address the issues raised on behalf of the respondent, which were also raised in the Respondent's Review document.

Discussion and analysis

9. The refusal of the application made by Samina Kousar, headed 'Refusal of EUSS Family Permit' and dated 13 July 2021, is in the following terms:

Your Application

Thank you for your application for an EU Settlement Scheme (EUSS) Family Permit. Your application has been carefully considered, but from the information available you do not meet the requirements for a EUSS Family Permit.

The reasons for this decision are set out on the next page.
Reasons for Refusal

On 29 December 2020 you made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU(Family Permit)to the Immigration Rules on the basis you are a 'family member of a relevant EEA citizen'.

I have considered whether you meet the validity, eligibility and suitability requirements for an EUSS Family Permit, which are set out in Appendix EU (Family Permit) to the Immigration Rules (<https://www.gov.uk/guidance/immigration-rules/appendix-eu-family-permit>). You can also find out more about the requirements in the guidance on GOV.UK (<https://www.gov.uk/familypermit/eu-settlement-scheme-family-permit>).

Your application has been refused because you have not provided adequate evidence to prove that you are a 'family member' - (a spouse; civil partner; durable partner; child, grandchild, great-grandchild under 21; dependent child, grandchild, great-grandchild over 21; or dependent parent, grandparent, great-grandparent)- of a relevant EEA or Swiss citizen or of their spouse or civil partner as claimed.

As your relationship to the sponsor does not come within the definition of 'family member of a relevant EEA citizen' as stated in Appendix EU (Family Permit) to the Immigration Rules, you do not meet the eligibility requirements. Your application is therefore refused

Next Steps

If you have further evidence you want us to consider, you can make another application under the EUSS Family Permit at no cost: <https://www.gov.uk/family-permit/eu-settlement-schemefamily-permit> If you have any questions or would like to discuss this letter, details on contacting us can be found on our website: <https://www.gov.uk/contact-ukvi-inside-outside-uk/y>.

You can also appeal this decision to the First Tier Tribunal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020. You have 28 days from the date since you received this decision to appeal.

You can appeal on the basis that the decision is not in accordance with the EUSS Family Permit rules, or that it breaches any rights you have under the Withdrawal Agreement, the EEA EFTA Separation Agreement, or the Swiss Citizens' Rights Agreement. You may bring or continue an appeal from inside or outside the UK.

10. There is also in the bundle a refusal for Samina Kousar dated 9 August 2021 and the following terms:

You have applied for an EEA family permit to join your EEA sponsor, as stated in your application form, into the United Kingdom as the 'extended family member' as so defined of that EEA national. I have considered your application under regulation 8 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016. You can read the Immigration (European Economic Area) Regulations 2016 at: <http://www.legislation.gov.uk/uksi/2016/1052/contents/made>

...

The Decision

- You state that your brother is a Spanish national. You have provided evidence that your sponsor holds a Spanish passport.
- In accordance with the Regulation 8 (2)(b) of the EEA Regulations 2016 (as amended) and extended family member applicant must demonstrate they were either:
 - o dependent on the EEA national in a country other than the UK
 - o a member of the EEA nationals household in a country other than the UK
- you are claiming to be dependent upon your EEA sponsor and have provided several money transfers. However it should be noted that these money transfers cannot be verified by this department *and as a result we cannot confirm they ever took place. Consequently, without further evidence to corroborate that these money transfers genuinely took place, we cannot be satisfied you are dependent as claimed*
- In order for this department to establish your dependency we must be satisfied that you need the financial support from the EEA national to meet your essential needs.
- It is also noted that you have not provided any sufficient evidence regarding your own financial situation. In the absence of this evidence this department cannot sufficiently establish your dependency, either wholly or partly, upon your EEA sponsor because we are unable to establish if you need the financial support from the EEA national to meet your essential needs.
- On that basis you do not meet the requirements of Regulation 8 (2) (b) and your application is refused.

I therefore refuse your EEA Family Permit application because I'm not satisfied that you meet all of the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.

We have also considered whether you meet the requirements for an EU Settlement Scheme family permit but, for the following reasons, you are not eligible under this route either. Please see accompanying 'REFUSAL OF EUSS FAMILY PERMIT' document.

Whilst you do have a right of appeal against the decision to refuse your application under both the EEA and The USS family permit routes are set out above, you should be aware that the EEA family permit ended on 30 June 2021. An EEA family permit, regardless of the date it was issued, would not be valid for travel to the UK after 30 June 2021. This includes EEA family permit switch are issued following a successful appeal.

11. The Refusal notices for the other respondents are in similar terms, albeit that for Numan Wali is dated 6th and not 9th August 2021.
12. There is reference in the application for permission to appeal to the Respondents Review undertaken by the Entry Clearance Officer having received the ground seeking permission to appeal, dated 9 March 2022, a copy of which is in the appeal bundle.

13. The date of the application for entry as a family member of an EEA national is dated 11 September 2019.
14. When the EEA Regulations were revoked, transitional provisions, the [Immigration and Social Security Coordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#) (“the Transitional Regulations”) preserved the appeal rights in respect of pending appeals and applications, subject to amendments set out in paragraphs 5 and 6 of Schedule 3 of those regulations. Paragraph 5 (1) draws a distinction between appeals and decisions taken prior to 31 December 2020 on the one hand (1(a) to 1(c)) and those taken after that date (1 (d)). That distinction is maintained in paragraph 6 (1)(cc) which sets out the rights of appeal in each of these different categories. Schedule 3 para 5 reads:

Existing appeal rights and appeals

5.—(1) Subject to sub-paragraph (4), the provisions of the EEA Regulations 2016 specified in paragraph 6 continue to apply—

(a) to any appeal which has been brought under the Immigration (European Economic Area) Regulations 2006 and has not been finally determined before commencement day,

(b) to any appeal which has been brought under the EEA Regulations 2016 and has not been finally determined before commencement day,

(c) in respect of an EEA decision, within the meaning of the EEA Regulations 2016, taken before commencement day, or

(d) in respect of an EEA decision, within the meaning of the EEA Regulations 2016 as they continue in effect by virtue of these Regulations or the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, which is taken on or after commencement day.

(2) For the purposes of paragraph (1)—

(a) an appeal is not to be treated as finally determined while a further appeal may be brought and, if such a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned; and

(b) an appeal is not to be treated as abandoned solely because the appellant leaves the United Kingdom.

(3) The revocation of the EEA Regulations 2016 does not affect the application of the Immigration (European Economic Area) Regulations 2006 to an appeal that falls within paragraph 3(1) of Schedule 4 to the EEA Regulations 2016.

(4) The provisions specified in paragraph 6 do not apply to the extent that the provisions of the EEA Regulations 2016 specified in paragraph 6 continue to apply to an appeal or EEA decision by virtue of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020.

15. For a person to benefit from the EEA Regulations as they applied on 31 December 2020 and the transitional provisions, an application generally needs to have been made by 11pm on 31 December 2020. There is an exception for EEA family permits for direct family members and durable partners outside the UK where the application was made before 1 July 2021 and the applicant comes within the provisions of the [Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020/1209](#). NB – the exception did not apply to extended family members generally. They were subject to the 31 December 2020 deadline.

16. If the decision was made before 11pm 31 December 2020 the ground of appeal is whether the decision under appeal breaches the appellant's rights under the EU Treaties as they applied in the United Kingdom prior to 31 December 2020 (see [Geci \(EEA Regs: transitional provisions; appeal rights\) \[2021\] UKUT 285 \(IAC\)](#), at [12] to [20]). The right of appeal against a decision made before 31 December 2020 continues in force until the appeal is finally determined. The date for considering issues is 31 December 2020 (the specified date).
17. In his skeleton argument dated 27 June 2024 Mr Malik KC notes there is no challenge by the ECO to the findings made by the Judge in relation to regulation 8(2) of the 2016 Regulations.
18. I accept the submission the author of the ECO's grounds appears to have proceeded on the basis of an inadvertent error in that the applications for EEA family permits were made under the 2016 Regulations prior to 31 December 2020, the applications were refused under the 2016 Regulations, the appeals to the First-tier Tribunal were under the 2016 Regulations, and it was submitted by the ECO that the key issue in the appeal is whether the above respondents were dependent upon the EEA sponsor for the purposes of Regulation 8(2) of the 2016 Regulations.
19. The submission in the grounds that the appeals were not appeals under the 2016 Regulations has not been shown to have any legal merit and are, as submitted by Mr Malik KC, simply untenable.
20. On the basis the correct legal analysis I find the ECO has failed to establish arguable legal error material to the decision of the Judge to allow the appeal.

Notice of Decision

21. No legal error material to the decision to allow the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 July 2024