



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001929
UI-2024-001943
UI-2024-001950
UI-2024-001952

First-tier Tribunal No:
IA/00715/2022; EA/50132/2022
IA/00732/2022; EA/50133/2022
IA/00734/2022; EA/50134/2022
IA/00735/2022; EA/50135/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 19 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

**SIDRA BEGUM
MUHAMMAD ASLAN
NADIA BEGUM
ALYAN ADNAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Khan of Counsel instructed by Parkview Solicitors Ltd

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

Heard at Field House on 9 September 2024

DECISION AND REASONS

1. The appellants are all nationals of Pakistan. The appellants appeal with permission from First-tier Tribunal Judge Cox against the decision of First-tier Tribunal Judge Gould ('the Judge'), promulgated on 29 February 2024, in which the Judge dismissed their appeals against the respondent's refusal decisions of 12 April 2021 of their applications for EEA Family Permits made under the Immigration (EEA) Regulations 2016.

2. On 29 December 2020, the first appellant, who was born on 5 January 1987, made an application for a Family Permit as a dependent family member of her brother-in-law, Mr Jahfar Iqbal Khan Begum ('the Sponsor'), a Spanish national exercising treaty rights in the UK. The second, third, and fourth appellants made applications for EEA family permits as dependent family members of the Sponsor on the same occasion.
3. The appellants appeals were dismissed in a decision of First-tier Tribunal Judge Power promulgated on 16 December 2022. The appellants appealed to the Upper Tribunal and Upper Tribunal Judge Hanson in a decision dated 27 September 2023 set aside First-tier Tribunal Judge Power's decision and remitted the appeals for a de novo hearing and the appeals came be First-tier Tribunal Judge Gould.

The grounds of appeal

4. In summary the grounds seeking permission contend the Judge erred as:

“(i) there is no basis in law for an appeal under the 2016 Regulations to be dismissed on the basis of theoretical prospective access to public funds;

(ii) the Judge has, in reality, imported an 'adequate maintenance' requirement into the 2016 Regulations; and

(iii) he fails to adequately reason the legal basis for the decision.”

Permission to appeal

5. Permission to appeal was granted by First-tier Tribunal Cox in the following terms:

“ ...

2. The judge summarised the ASA and noted that it argued that: the Appellants are extended family members of the Sponsor in accordance with the Regulations, they depend upon him financially, it is sustainable for him to support the Appellants and they would not become an unreasonable burden on the welfare state.

3. Further the judge noted that the issues include

- is it sustainable for the Sponsor to financially support the Appellants and;
- would the Appellants become an unreasonable burden on the welfare state

4. As such, the Appellant's advocate clearly believed these matters were relevant.

5. Nevertheless, it is arguable that the judge failed to properly apply the law. Under regulation 8(2)(b) the sole issue is whether the Appellants are "dependent upon the EEA national". It is arguable that whether the dependency is sustainable and, or, that they will become an unreasonable burden on the welfare state are irrelevant.

6. Permission to appeal is granted on all grounds.”

The First-tier Tribunal decision

6. The Judge identifies the issues in the appeals at [6] as being whether the fourth appellant is related to the Sponsor as claimed and whether it is sustainable for the Sponsor to financially support the appellants and whether the appellants would become an unreasonable burden on the welfare state.
7. There is no dispute that the Sponsor is a qualified person.
8. The Judge heard evidence from the Sponsor and Mr Ali (the first appellant's husband). The respondent was not represented at the hearing and in the absence of a Home Office Presenting Officer there was no cross examination of the Sponsor or Mr Ali, however the Judge asked the Sponsor and Mr Ali a few questions for clarification and established that the Sponsor lives with his wife and 4 children in a 6 bed house and for the last 5 years the first appellant's husband, Mr Ali has also lived with them. Mr Ali told the Judge that he had borrowed £40,000 for the deposit on the house and that he paid the mortgage of £429 per month.
9. The Judge sets out the findings of fact at [18 - 25].

The hearing

10. The appeal came before me on 9 September 2024 for a hearing by CVP. The parties were represented as indicated above.
11. It was agreed between the representatives that the Judge had erred in law in dismissing the appeals for the reasons advanced in the grounds of appeal upon which permission to appeal had been granted as set out above. In particular, it was agreed that the sole issue before the Judge was whether the appellants were dependent on the Sponsor and that it the findings as to whether it is sustainable for the Sponsor to support the appellants and whether they would not become an unreasonable burden on the welfare state were not relevant to the issue of dependency.
12. It was further agreed between the parties that the errors of law are such as to require the decision of the Judge to be set aside whilst preserving the findings at [18] that the fourth appellant is the Sponsor's nephew and at [19] that the Sponsor has sent remittances to the appellants and that there is a pattern of established remittances.
13. As to disposal of the appeals both representatives were in agreement that further evidence and findings would be required to establish whether the appellants are genuinely dependent on the Sponsor and that the appellants require the support to meet their basic needs, Lim – ECO (Manila) [2015] EWCA Civ 1383 and so it was appropriate to remit the appeals to the First-tier Tribunal for remaking.
14. At the end of the hearing, I announced that I agreed the respondent had rightly conceded there to be a material error of law in the decision of the Judge such that it is set aside with the findings at [18] and [19] preserved.

Decision

15. In summary, Regulation 8 of the Immigration (European Economic Area) Regulations 2016 requires the appellants to first establish that they are the relatives of an EEA national. Provided, the relationship is established, there are two separate routes to qualification. The appellants must demonstrate they are either: (i) dependent on the EEA national in a country other than the UK, or (ii) a member of the EEA national's household in a country other than the UK.
16. The entitlement to an EEA family permit only accrues if the appellants are 'dependent' on the union citizen. In Reyes v Migrationsverket (C-423/12), albeit in the context of a 'Family member', the CJEU confirmed that dependency is a question of fact and the dependency must be genuine, but if it is found that the family members essential needs are met by the material support of an EEA national, there is no need to enquire as to the reasons for the dependency and there is no reason to show emotional dependency.
17. In Lim - ECO (Manila) [2015] EWCA Civ 1383, Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs. Whether the appellants are dependent on the Sponsor is therefore a factual question to be assessed on the evidence before the Tribunal.
18. For the reasons given above, I set aside the decision of the Judge preserving the findings at [18] and [19]. I remit the appeals to the First-tier Tribunal for a rehearing before any Judge other than First-tier Tribunal Judge Gould or First-tier Tribunal Judge Power.

Notice of Decision

It is accepted that the Judge has materially erred in law. The decision is set aside with the findings at [18] and [19] preserved. The appeals are to be heard afresh by a Judge other than First-tier Tribunal Judge Gould or First-tier Tribunal Judge Power.

N Haria

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 September 2024