



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: EA/14292/2016
EA/14301/2016

THE IMMIGRATION ACTS

**Heard at Newport
8 November 2018**

**Decision & Reasons
Promulgated
On 23 November 2018**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

**HINA ARSHAD
HIRA ARSHAD**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss S Alban, instructed by Fountain Solicitors.

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellants are nationals of Pakistan. They appeal, with permission, against the decision of Judge Kempton in the First-tier Tribunal dismissing their appeals against decisions of the respondent (by his agent the entry clearance officer) on 25 November 2016 refusing them EEA family permits as the dependent children over 21 of their father, a Spanish national residing in the United Kingdom. We should say that the second appellant

was under 21 at the date of her application, but over 21 by the date of the decision, and it is common ground that any challenge to the decision has to be on the basis of her age at the date of the decision. Two appeals by other family members were originally listed before Judge Kempton together with these, but the adverse decisions were withdrawn in those cases and so she was and we are concerned only with the two present appellants. The only remaining issue is dependence.

2. Judge Kempton set out an extract from Lim v ECO Manila [2015] EWCA Civ 1383 at [32] as follows:

“the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt... If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case.... The fact that he chooses not to get a job and becomes self-supporting is irrelevant. It follows that on the facts of this case there is no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources.”

3. She then continued:

“In the circumstances of this case, the two appellants concerned in this appeal, Hina and Hira appear to have no assets of their own whatsoever and have always been reliant upon their father, their EEA family members for support.

They are both still studying. The elder is paying for her education to become a lawyer and the younger has just started medical studies. They have never been employed. At the end of their studies they might reasonably expect to be in a position to work and earn their own keep. At present they cannot do that in their chosen careers. However, there is no evidence that they could not find other work to support themselves instead of studying. There is also the issue of the cost of studying in the UK which the sponsor said that they could do instead of doing so in Pakistan. It would cost a considerable sum per annum for each of the appellants to study at University in the UK and it depends upon them gaining admission to study in their chosen fields.

The issue is that of dependency. The appellants each receive a lump sum each month from their father for all their needs and they decide how to spend that money paying for tuition fees and rental as well as food. Accommodation and food would be essential matters. However, I see no breakdown of those heads of payment. There is also no consideration given as to whether the appellants could in fact find employment in order to become self-sufficient and not be reliant upon their father. That is a matter which has not been considered.”

4. As it appears to us, and as Mr Howells on behalf of the Secretary of State agreed, the facts found by the Judge should have led her to allow these appeals rather than dismissing them. This is not a case where the

appellants have access to funds other than those provided by the relative upon whom they claim dependence. The appellants have no other resources. In those circumstances the question why they have no other resources is one which to quote Lim again, “the court will not ask”.

5. Judge Kempton erred by asking this question and, in effect, dismissing the appeals because it was not satisfactorily answered. We set aside her decision. We substitute decisions allowing the appeals of both appellants.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 12 November 2018.