



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

Appeal Number: EA/02428/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10th May 2019**

**Decision & Reasons Promulgated
On 11 June 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**AQSA NAHEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Rees, instructed by Clyde Solicitors

For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Aujla, dated 11 January 2019, dismissing her appeal against the refusal of a residence card under Regulation 8 of the Immigration (EEA) Regulations 2006.
2. Permission to appeal was granted by First-tier Tribunal Judge I D Boyes on 11 April 2019 on the following grounds:
 - “2. The grounds, which are extraordinary prolix, assert that the Judge erred in the assessment of whether a Non EU appellant can rely upon derivative EU rights from a person who is in the EU but is too

not an EU national. Secondly, can one be a member of a household in which the principal does not live and which is in a different country to the principal.

3. I fear I know the answer to both questions but I agree they are arguable in terms of a permission request.
4. The grounds really ought to be narrowed and streamlined prior to an appearance in the UT.
5. Permission is granted on all matters raised.”

Submissions

3. Mr Rees submitted that there were two issues to be decided. Firstly, can a non-EU Appellant rely on derivative EU rights from a person in the EU who is not an EU national at all relevant times? In this case the Appellant’s Sponsor, her uncle Mr Kohlon, became a Belgian national in July 2013, after the Appellant came to the UK. The issue was whether the Appellant could benefit from Regulation 8 because the Sponsor was exercising Treaty rights as an EEA national at the time the application was made.
4. The second issue was whether an Appellant can be a member of a household in which the principal does not live at the relevant time? The Sponsor had lived in Belgium since 2000. The Appellant had lived in his family home, of which he was the head of the household, in Pakistan until she came to the UK in 2010. The Appellant lived with the Sponsor’s brother and his parents.
5. Mr Rees submitted that there was no authority on whether the Sponsor had to be an EU national prior to the Appellant’s entry into the UK. The Respondent accepted that the Sponsor was exercising Treaty rights since his entry into the UK. The judge found that it was implicit in Regulation 8 that dependency on an EEA national or membership of a household prior to entering the UK meant that the Appellant could not succeed because it was accepted that the Sponsor was not an EEA national until after the Appellant came to the UK. Mr Rees submitted that this assumption was incorrect and invited a liberal interpretation of Regulation 8. The judge should assess the situation at the time the application was made because the Regulations were unclear on this point. The judge should look at the facts at the date of the application and the judge had erred in law in reading something into the Regulation that was not there.
6. Mr Rees submitted that the time the Sponsor had spent in Pakistan was not addressed in detail, but he could still be the head of a household even though he was working abroad. The Sponsor was financially supporting the family living in his household and there was no evidence before the judge to show that the Sponsor’s brother was providing financial support.
7. Miss Cunha submitted that when looking at extended family members under Regulation 8 it was necessary to consider the exercise of Treaty rights by an EEA national in the UK. In order to be able to exercise Treaty rights a person had to be an EEA national. Someone who became an EEA

national in 2013 was not able to exercise Treaty rights before that date. The Sponsor could not satisfy Regulation 6 before 2013. The Sponsor was living and working in Belgium under domestic law. He was not exercising Treaty rights at that time, nor was he dependent on an EEA national.

8. In relation to membership of the household the Sponsor could not be part of a household in Pakistan if ground one succeeded. If the Appellant was exercising Treaty rights in Belgium, then he could not be the head of a household outside the EU. Membership of the household involved living under the same roof. There could not be prior dependency because there was insufficient evidence that the Sponsor's income was necessary to maintain the Appellant. The judge's finding at paragraph 34 was open to him and there was no error of law.
9. Miss Cunha submitted that Regulation 8 ensured dependants from the same household can exercise free movement. The Sponsor was exercising free movement rights without being present in the household, so the Appellant's argument did not prevent the Sponsor from exercising Treaty rights. The Appellant submitted a person was entitled to exercise freedom of movement in any EU country. As an EU national the Sponsor moved from Belgium to UK. It was accepted that the Appellant had already been in the UK for five years at that time.
10. Mr Rees submitted that the Sponsor had financially supported the Appellant notwithstanding the previous entry clearance application. The challenge to paragraph 34 was a rationality challenge.

Conclusions and reasons

11. The relevant Regulation is Regulation 8(2). It states:

"A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and

 - (a) the person is/was residing in a country other than the United Kingdom and is/was dependent upon the EEA national or is a member of his household;
 - (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
 - (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or a member of his household".
12. The judge referred to the case of Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC) in which the Tribunal held:

"Under the scheme set out in reg 8(2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an 'extended family member' in any one

of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK:

- i. prior dependency and present dependency
- ii. prior membership of a household and present membership of a household
- iii. prior dependency and present membership of a household
- iv. prior membership of a household and present dependency.

It is not necessary, therefore, to show prior and present connection in the same capacity: i.e. dependency - dependency or household membership - household membership ((i) or (ii) above). A person may also qualify if able to show (iii) or (iv)."

13. At paragraphs 28 to 30 the judge found:

"28. It is implicit in, if not clear from, the regulations that for a dependency or membership of the Sponsor's household to count, both prior and in the United Kingdom, it had to be on a citizen of a member state of the European Union. Any period of dependency or membership of household prior to a foreign national becoming an EU national did not count for the regulations are intended to encourage free movement of European Union nationals and their family members, both close and extended.

29. A very important and highly relevant revelation came to light during the Sponsor's evidence. There was no mention of that in the witness statements of the Appellant and the Sponsor and the Appellant's representatives had equally not revealed that information. By 'her representatives' I mean her solicitors and not Mr Malik. Any nondisclosure of relevant material was not the responsibility of Mr Malik as counsel presenting the appeal before me and was clearly the responsibility of the Appellant's solicitors who were duty-bound to make enquiries and submit relevant evidence and information so that there was no risk of the tribunal, even Mr Malik himself, being misled into making a legal error.

30. The Sponsor stated for the first time in his evidence that he had not become a Belgian national until 2013. His passport was issued on 01 July 2013 but that would not itself be enough to indicate that he was not a Belgian national before 2013. However, the Sponsor clearly stated that he became a Belgian national in 2013 although he could not remember the exact date. I was astonished when I heard that evidence and Mr Malik also appeared to be taken by surprise, through no fault on his part."

14. The facts of this case are that the Appellant arrived in the United Kingdom on 20 February 2010 and has lived in the United Kingdom continuously since then. The Sponsor did not become a Belgian national until July 2013, three years after the Appellant arrived in the UK. The judge found that any dependency on or membership of the Sponsor's household that the Appellant may have had before arriving in the United Kingdom clearly did not count as the Sponsor was not an EU national at the time. Even if it was accepted that she was now dependent on the Sponsor or member of

his household here in the UK, the Sponsor only became a Belgian national in July 2013. This appeal would fall to be dismissed on the ground that there was no prior dependency on or membership of the household of an EU national before the Appellant entered the United Kingdom.

15. The purpose of the EEA Regulations is to facilitate the free movement of EU nationals within the EU. Prior to July 2013 it was accepted that the Sponsor was not an EU national. Up to that date he could not rely on the exercise of Treaty rights under the EEA Regulations. It follows from reading Regulation 8 that a person satisfies the conditions in this Regulation if s/he is a relative of an EEA national and was residing or dependent on the EEA national or a member of the household prior to coming to the UK. Since the Sponsor was not an EEA national prior to the Appellant coming to the UK she could not satisfy Regulation 8 because she was not a relative of an EEA national until July 2013. She had to show that she was dependent upon an EEA national or member of his household prior to her arrival in the UK. On the facts of this case she could not do so. Regulation 8 was not satisfied and the appeal was properly dismissed on that basis.
16. For the sake of completeness, the judge found that the Appellant could not be a member of the Sponsor's household because he had been living in Belgium since 2000 and his household was there. The Appellant had never lived in Belgium as part of the Sponsor's household and there was insufficient evidence to show that the Appellant was wholly or mainly dependent on the Sponsor given that she was being sponsored by her father and another man to come to the UK to study.
17. The question of whether a person was a member of someone's household was a question of fact and degree. Whilst it is accepted that a person may be the head of a household and working abroad it had to be assessed on the facts and the amount of time the head of the household had spent away from that household would be relevant. In this case the Sponsor had not lived in the same household as the Appellant since 2000. The Appellant has not lived with the Sponsor in Belgium prior to coming to the UK. On the facts of this case it could not be said that the two were part of a shared household.
18. There was insufficient evidence to show that as head of the household the Sponsor financially supported his brother, his parents and the Appellant. The judge's finding at paragraph 34 was open to the judge on the evidence before him and therefore the Appellant was unable to show that, by reason of his financial support, the Sponsor remained the head of the household in which she lived in Pakistan.
19. In summary, the Appellant cannot derive any rights from the Sponsor at a time when he was not an EEA national. The Sponsor could not exercise Treaty rights until July 2013. The Appellant's presence in the UK had no bearing on the Sponsor's ability to exercise his free movement rights. The Appellant was not a member of the Sponsor's household prior to coming to

the UK, nor was she financially dependent on him. She came to the UK as a student and there was insufficient evidence of financial support by the Sponsor.

20. Accordingly, the judge's finding that the Appellant could not satisfy Regulation 8 was open to him on the evidence before him. I find that there was no error of law in the judge's decision of 11 January 2019 and I dismiss the Appellant's appeal.

Notice of Decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed

Date 7 June 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed

Date 7 June 2019

Upper Tribunal Judge Frances