Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00539/2020
EA/00540/2020

THE IMMIGRATION ACTS

Remote Hearing by Microsoft Teams	**Decision & Reasons Promulgated**
On 4th January 2022	**On 26th January 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

ADELAIDE EFFAH (1)
KWAME ABOAGYE (2)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Socrates Aboagye, Sponsor
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The hearing of the appeal before me on 4th January 2022 took the form of a remote hearing using Microsoft Teams. Neither party objected. The appellants sponsor joined the hearing, and I was satisfied that he was able to follow the proceedings. I sat at the Birmingham Civil Justice

Centre. I was addressed by Mr Aboagye and Mr Bates in exactly the same way as I would have been if the parties had attended the hearing together. I am satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that all parties had been able to participate fully in the proceedings.

2. Although Lawrencia & Co Solicitors are on the Tribunal record as acting before the appellants, at 17:04 on 3rd January 2022, the Tribunal received an email from Lawrencia Solicitors informing the Tribunal that only the sponsor would be attending the hearing. The sponsor attended and applied for an adjournment so that he can arrange for the appellants to be represented. He submitted that he had only returned from Ghana three days ago and had insufficient funds to make payment of the necessary fees for the appellants to be represented. He accepted that the Notice of Hearing had been sent to the parties on 6th December 2021, but he had not made payment to the appellant's representatives prior to his departure to Ghana. He had spent the funds on his visit to Ghana, and he submitted, a short adjournment would give him sufficient time to raise the funds for the appellants to be represented at the hearing of the appeal. I refused the application for an adjournment. The underlying decisions under appeal are dated 9th December 2019. As Mr Aboagye acknowledged, the parties were sent the Notice of Hearing on 6th December 2021. He had nevertheless prioritised his visit to Ghana and used the funds for the visit so that on his return, he has insufficient funds for the appellant's to be represented at the hearing before me. The

appellants have had ample time to arrange representation and ensure there are sufficient funds available to pay for their representation. I cannot be satisfied that even if there were a short adjournment, the necessary funds would be available to secure representation in a timely fashion. It is not in the interests of justice or in accordance with the overriding objective to permit such an appeal to drag on. The appellants grounds of appeal have been set out in writing. Balancing the overriding objectives of ensuring the party's ability to participate fully in the proceedings and avoiding delay, the fair and just course, is to proceed with the hearing of the appeal.

3. The appellants are nationals of Ghana. They appealed the respondent's decisions of 9th December 2019 to refuse to issue an EEA Family Permit as the extended family member of an EEA national exercising treaty rights in the UK in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 EEA Regulations"). The appeal was dismissed by First-tier Tribunal Judge Ennals ("Judge Ennals") for reasons set out in a decision promulgated on 30th June 2021.

4. Judge Ennals heard oral evidence from the appellants' sponsor, Mr Socrates Aboagye and he set out his findings and reasons for dismissing the appeal at paragraphs [10] to [19] of his decision. He was persuaded by the DNA evidence that the appellants are related as claimed to the sponsor. He went on to address whether the appellants are dependent upon the sponsor at paragraphs [18] and [19] of the decision. He said:

> "18. I turn now to the question of dependence. This has to be that the appellants are unable to meet their essential needs without the support of their sponsor. In both these applications it is claimed that each received £100 per month from the sponsor. Both appellants are said to live together in accommodation rented by the sponsor and have no income other than what they receive from the sponsor. In the supplementary bundle is a copy of the tenancy agreement for accommodation for the appellants, with the tenant as the sponsor. This was a tenancy from December 2018 to December 2019. There was a further receipt for a year's rent paid in February 2020, in the name of the sponsor. The other evidence of

dependence was in the form of money transfer receipts, either for the sponsor sending funds, or the appellants receiving funds. Receipts for Adelaide receiving payments are from January and April 2009 (£100), July and September 2010, February and November 2011, February and October 2013, and to 2015. For Kwame receipts date from July 2009 – 2015. There is also an account statement with 'Pay Angel' in the name of the sponsor. This covers a period from January 2020 – May 2021. This shows transfers to Adelaide of £1853.46, which equates to approximately £109 pm. Similar sums are transferred to Kwame in the same period. There are also MoneyGram and other transfer company receipts for amounts sent by the sponsor to either appellant during 2012 – 2019. There a *(sic)* number of peculiarities in some of these. At p.28 is a receipt from 21 June 2018, which refers to the recipient as Kwame, but the sender as Adelaide, with the sender being in Smethwick. Since the sponsor lives in Kent this is odd. The sponsor said that he had gone to Smethwick to make the transfer, using a Smethwick based agent. That is odd, but not implausible. It also refers to Kwame as the sender's son. Since the sender is said to be Adelaide, this is odd. The sponsor said that nephews are often described as sons in Ghana. The same issues arise with a transfer in December 2018 (p.31), August 2016, June 2015, August 2013, December 2013, June 2015. The sponsor states that Adelaide has never been to the UK, and so these must be mistakes. Ms Kwegyir-Afful argues that I should not discount the large number of transfer receipts because a handful contain administrative errors. That is probably a fair point, but there is no satisfactory explanation of why Adelaide will be recorded as sending money from Smethwick to Kwame, when it is said that these payments actually were from the sponsor, living in Kent.

19. That finding does not, of itself, prove that the appellants are dependent on their sponsor in order to meet their essential needs. The case presented to me contains virtually no information about the life of either appellant in Ghana. One is aged 34 and the other 28. The sponsor says that neither has ever worked, but there is no explanation of how they lead their lives, why their parents could not support them, or indeed any evidence (other than identically worded statements stating that they have no other income) to indicate that they have no other income or employment to support themselves. There are no bank statements, or details of any aspect of their lives, and what they have done since childhood. I have also been given no indication of whether the rental payments are in addition to the regular transfers, or were paid out of those same funds. I have been no *(sic)* indication of the value of £100 pm in Ghana, and whether that represents enough to live on. While I accept that it is hard to prove a negative, in the absence of any picture of the wider context of what they have been doing with their lives over many years of their adult lives, I do not accept that either appellant is dependent on their sponsor. They may be, but the evidence before me falls far short of establishing this, on the balance of probabilities."

5. The appellants advance four grounds of appeal. First they claim that in considering whether the appellants are extended family members for the purposes of Regulation 8 of the 2016 EEA Regulations, Judge Ennals restricted his consideration to whether the appellant's are dependent

upon their sponsor without considering the alternative. That is, whether they are members of their sponsor's household. Second, Judge Ennals failed to give effect to binding decisions of the superior courts Lim v ECO [2015] EWCA Civ 1383. The appellants claim Judge Ennals failed to give good reasons why he could not rely on the factual evidence placed before him and did not give good reasons why he could not rely on the tenancy agreement that confirmed that the appellants were living in accommodation rented by the sponsor for them, and the consistent and substantial money transfer receipts evidencing transfer of monies over an extended period of time between 2008 and 2021. Third, the appellants claim Judge Ennals made a factual error when he said there was no evidence of their circumstances in Ghana, when in fact the appellants had provided a death certificate, a tenancy agreement confirming that they live in the house rented by the sponsor in Ghana and put before the Tribunal evidence in the form of witness statements from the appellants and their sponsor. Finally, the appellant's claim Judge Ennals erroneously required the appellant to demonstrate what they had done since childhood, why their parents cannot support them, why they do not have bank accounts and to produce evidence regarding the relevant exchange rates.

6. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 4th October 2021. The matter comes before me to consider whether the decision of Judge Ennals is vitiated by a material error of law, and if so, to remake the decision.

Error of Law

7. At the hearing before me, I referred Mr Aboagye to the evidence that appears to have been before the First-tier Tribunal. At paragraph [3], Judge Ennals refers to 'an appellant bundle' and a 'supplementary bundle' relied upon by the appellants. Mr Aboagye confirmed that the evidence relied upon by the appellants was set out in the appellants'

bundle comprising of 97 pages and which included a statement made by him in February 2021 and statements made by each of the appellants in February 2021. He confirmed that the 'supplementary bundle' referred to is a bundle comprising of 41 pages which included a DNA report and a copy of a Tenancy Agreement for a property that he had rented for the appellants in Accra. The supplementary bundle also includes two receipts for payment of rent. The first *(page 24)* relates to payment of rent in the sum of 3,600 Ghanaian cedi**,** described as 'one year rent', and the second *(page 25),* relates to payment of rent in the sum of 4,800 Ghanaian cedi**,** described as payment for 'Chamber and Hall Self-Contain'. Mr Aboagye confirmed that the only witness statements that were before the First-tier Tribunal were the statements dated February 2021 in the appellants bundle.

8. Before me, Mr Aboagye maintains that he is responsible for the maintenance of the appellants and he submits, he provided a considerable amount of evidence of the financial support he has provided over the years. He said that he had rented the property described in the tenancy agreement as 'Chamber and Hall Self-Contained' so that the appellants would not have to travel regularly between Konongo and Accra to deal with the application for Entry Clearance, and because of the potential costs of and risks associated with travel between Konongo and Accra. He said that the appellants are now living in Konongo in a property that is owned by him. He accepted there was no evidence before the First-tier Tribunal regarding that property in Konongo, its ownership or who it was occupied by. Mr Konongo claimed that the appellants have lived at his property in Konongo since they were young, and he had started looking after them. He said that Adelaide's father is sick and his whereabouts are unknown. Her mother, Mr Aboagye's sister, passed away in 2004. Mr Aboagye said that his brother, Kwame's father, lives in Konongo *(at a different address to the appellants)* and because of ill-health, he is unable to take care of Kwame. Again, Mr Aboagye accepted there was no evidence before the First-tier Tribunal regarding

the care of the appellants and the appellants living arrangements beyond the bare claims in the witness statements that the appellants live at his old address in Konongo.

9. In reply, Mr Bates submits Judge Ennals was entitled to dismiss the appeals for the reasons set out at [19] of his decision and to conclude that the appellants have not discharged the burden upon them to establish that they are dependent on their sponsor. He submits that in the end, the Judge simply did not have the evidence before him, to establish that the appellants essential needs are met by the money sent from the sponsor. He submits that although Judge Ennals accepted that the appellants are related as claimed to the sponsor, it is clear from what is said at paragraphs [16] and [17] of the decision that Judge Ennals had concerns about the death certificate relating to Adelaide's mother and he found that he could not place much reliance on the documents. Mr Bates submits the evidence regarding the appellant's circumstances in Ghana was lacking. There was no evidence before the Tribunal regarding the accommodation that the appellants live at in Konongo, and Judge Ennals was right to note that there was no evidence before him regarding the value of £100 per month in Ghana, and whether that represents enough to live on. Although the sponsor and appellants claim in the witness statements that the appellants' live as a member of their sponsor's household, there was no evidence before the Tribunal capable of establishing that during any period, the appellants have lived in anything that can properly be described to be the household of their sponsor. The simple act of living in accommodation paid for by the sponsor is insufficient to establish that the appellants are members of the EEA national's household.

Discussion

10. Insofar as is material, the expression "extended family member" is defined in Regulation 8 of the 2016 Regulations as follows:

> "Extended family member"
>
> (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a) (b) or (c) and who satisfies a condition in paragraph ... (2)...(2) The condition in this paragraph is that the person is –
>
> (a) a relative of an EEA national; and
>
> (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household and either –
>
> (i) accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom, or
>
> (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

11. The appellants must first establish that they are the relatives of an EEA national. Provided, as here, the relationship is established, there are two separate routes to qualification. The appellants must demonstrate they were 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. Although 'dependence' and 'membership of the EEA national's household' are alternative routes, there is often likely to be some overlap in the evidence.

12. I accept that in paragraphs [18] and [19] of his decision, Judge Ennals addresses, as he describes it, "*the question of dependence"*, without addressing the alternative route to qualification by considering whether the appellants satisfy the requirement that they 'are a member of the EEA national's household'. To that end, I am satisfied that the decision of Judge Ennals is vitiated by an error of law and must be set aside.

13. However, I reject the remaining grounds of appeal that each concern the judge's analysis of the evidence before the Tribunal regarding 'dependence'. In Reyes v Migrationsverket (C-423/12) 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. The CJEU held

that ‘family members’ could not be required to prove that they have searched for a job in the country of origin in order to be regarded as dependent and thus come within the definition of a family member under Directive 2004/38 art.2(2)(c).

14. In the grounds of appeal, the appellants refer to the decision of the Court of Appeal in Lim – ECO (Manila) [2015] EWCA Civ 1383 in which Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, held that the critical question is whether the person is in fact in a position to support themselves. The Court of Appeal held that in determining whether a family member was a "dependent direct relative" for the purposes of the Immigration (European Economic Area) Regulations 2006 reg.7(1)(c), the critical question is whether they were in fact in a position to support themselves. The Court of Appeal held the Malaysian mother-in-law of an EU national living in the UK was not dependent on him, despite the fact that she received financial support from him: she was financially independent and did not need the additional resources for the purpose of meeting her basic needs. Having reviewed the decisions of the CJEU regarding the test for dependency, at paragraph [25] of his decision, Elias LJ stated:

> “25. In my judgment, this makes it unambiguously clear that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. There are numerous references in these paragraphs which are only consistent with a notion that the family member must need this support from his or her relatives in order to meet his or her basic needs. For example, paragraph 20 refers to the existence of “a situation of real dependence” which must be established; paragraph 22 is even more striking and refers to the need for material support in the state of origin of the descendant “who is not in a position to support himself”; and paragraph 24 requires that financial support must be “necessary” for the putative dependant to support himself in the state of origin. It is also pertinent to note that in paragraph 22, in the context of considering the Citizens Directive, the court specifically approved the test adopted in Jia at paragraph 37, namely that:
>
> > “The need for material support must exist in the State of origin of those relatives or the State whence they came at the time when they apply to join the Community national.””

15. The correct test was set out at paragraph [32] of the decision:

> "32. In my judgment, 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, in my view. That is a simple matter of fact. 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, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs."

16. Whether the appellants are dependent on their uncle, Mr Aboagye was therefore a factual question for the Judge of the First-tier Tribunal to assess on the evidence before the Tribunal. At paragraph [18] Judge Ennals properly noted; *"... This has to be that the appellants are unable to meet their essential needs without the support of their sponsor."*. I reject the claim that Judge Ennals made a factual error when he said there was no evidence of the appellants' circumstances in Ghana. In reaching his decision it is plain from paragraphs [18] and [19] that Judge Ennals was aware of and had in mind the evidence before the Tribunal including the copy of the tenancy agreement, and the receipts for the rent said to have been paid by the sponsor. In paragraph [18] Judge Ennals referred to the information set out in the visa applications and that both appellants are said to live together in accommodation rented by the sponsor and to have no income other than what they receive from the sponsor. It is also plain from what is said in paragraph [19] that he also had in mind the identically worded witness statements of the appellants when reaching his decision.

17. I also reject the claim Judge Ennals failed to give good reasons why he could not rely on the evidence placed before him. The question of dependency is not determined by the mere fact that the EU national has made resources available to the appellants. Although it is irrelevant why the appellants are dependent, dependency is not established simply by evidence confirming funds have regularly been transferred or a bare assertion that the appellants are not working or have no other income.

The question was whether, without the support the appellants receive from their sponsor, they would be unable to meet their essential needs. Judge Ennals properly pointed at paragraph [18] of his decision to concerns about the evidence before him, and at paragraph [19] of his decision, to the paucity of evidence in material respects. Judge Ennals was entitled to note that in the absence of any picture of the wider context, in the end, he was unable to accept that either appellant is dependent on their sponsor. In my judgment, that was an unassailable conclusion on the limited evidence before the Tribunal.

18. It follows that in my judgement, the findings and conclusions reached by Judge Ennals regarding 'dependence' can be preserved and the only error of law in his decision was his failure to consider whether the appellants are members of the EEA national's household.

19. There is a presumption that if the decision of the First-tier Tribunal is set aside, the Upper Tribunal will proceed to remake the decision at the hearing of the appeal. The sole issue is whether the appellant's members of the EEA national's household. No application has been made by the appellants in accordance with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce any further evidence.

Remaking the decision

20. The burden rests upon the appellants to establish their entitlement to an EEA Family Permit on a balance of probabilities. In reaching my decision I have had careful regard to all the evidence before me, whether it is expressly referred to in this decision or not.

21. The evidence relied upon by the appellants is set out in the appellants' bundle comprising of 97 pages and the supplementary bundle comprising of 41 pages that was before the First-tier Tribunal previously. The evidence before the Tribunal is limited to the witness statements of the appellants and Mr Aboagye dated February 2021. At paragraph [2] of his

witness statement, Mr Aboagye states the appellants "are members of my household", and at paragraphs [7] and [8], he states the appellants live in his house in Konongo and that they form part of his household in Ghana. There is no further elaboration. In their witness statements, the appellants both claim, again without any elaboration at all, that they are members of Mr Aboagye's household and that they went to live in Accra when preparing their application so they could easily travel from Accra to the UK. They both stated they currently live at their uncle's "old address in Konongo".

22. At page 22 of the appellants supplementary bundle there is a copy of a Tenancy Agreement for a property that is said to be rented by Mr Socrates Aboagye "*... for his dependents Adelaide Effah and Kwame Aboagye to occupy ...".* That tenancy agreement was made on 6th December 2018 and is said to expire on 5th December 2019. It is signed by Mr Aboagye and the appellants *(who signed as witnesses)*. The property is described as "Chamber and Hall Self-Contained) at an address in Accra. The monthly rent is said to be 300 Ghanaian cedi. The supplementary bundle also includes two receipts for payment of rent. The first *(page 24)* relates to payment of rent in the sum of 3,600 Ghanaian cedi**,** described as 'one year rent', and the second *(page 25)* relates to payment of rent in the sum of 4,800 Ghanaian cedi**,** described as payment for 'Chamber and Hall Self-Contain'. The monthly rent in that second receipt is said to be 200 Ghanaian cedi.

23. There is a complete lack of evidence before the Tribunal regarding the circumstances in which the appellants came to be living with Mr Aboagye as members of his household, or when they lived together as a 'household'. Fundamentally, neither the appellants nor Mr Aboagye set out in their witness statements the addresses at which they have lived as members of a household or say anything about the occupation of the property that the appellants now claim to live in. There is no evidence before me regarding the ownership of the property that the appellants

live at, beyond the bare assertions that it is a property in Konongo owned by Mr Aboagye. The ownership, occupation and matters relating to the upkeep and maintenance of that property should be capable of being evidenced with supporting evidence, but no such evidence is provided. Such evidence as is before the Tribunal causes me concern such that I am not prepared to find on the bare assertions made, that the appellants even live in a property that is owned by Mr Aboagye, as they claim.

24. Mr Aboagye states in his witness statement that the appellants live in his house in Konongo. He does not set out the address or provide any evidence of ownership of a property in Konongo. The appellants state in their witness statements that they currently live *(i.e. in February 2021)* at their uncles old address in Konongo. They too, do not set out the address at which they claim to live.

25. Before me, Mr Aboagye said that he had rented the property described in the tenancy agreement as 'Chamber and Hall Self-Contained' so that the appellants would not have to travel regularly between Konongo and Accra to deal with the application for Entry Clearance, and because of the potential costs of travel between Konongo and Accra. That tenancy agreement commenced on 6th December 2018 and ended on 5th December 2019. However, the appellants did not make their application for entry clearance until 11th November 2019. It is not credible that the sponsor would arrange for the appellants to live in Accra in December 2018, and to pay 12 months rent in advance, so that the appellants could avoid the costs and risks associated with travel between Konongo and Accra if the application for entry clearance was not to be made until some 11 months later. The appellant's evidence that they went to live in Accra when preparing their application as they could easily travel from Accra to the UK makes no sense. They could just as easily have travelled from Konongo, via Accra, to the UK after they had secured the relevant entry clearance. Furthermore, the applications for entry clearance were refused on 9th December 2019 and yet there is a receipt relied upon by

the appellants that seeks to establish that on 15th February 2020, Mr Socrates Aboagye paid 4,800 Ghanaian cedi, which is said to be a payment for "Chamber and Hall Self-Contain". If the purpose of renting that property in Accra was, as Mr Aboagye claimed before me, to avoid the costs and risks associated with travel between Konongo and Accra, while the application for entry clearance was dealt with, it is difficult to see why the tenancy was extended and rent was again paid in advance. It is also curious that the receipt dated 15th February 2020 relied upon by the appellants shows the monthly rent to be 200 Ghanaian cedi. There is no renewed tenancy agreement, but if the receipt is reliable, Mr Aboagye not only paid the rent, but paid 24 months rent in advance (i.e. 4,800 Ghanaian cedi). On the evidence before me, there is no explanation, let alone credible explanation for that course of action, when, if the evidence of Mr Aboagye can be relied upon, the accommodation in Accra was only required whilst the application for entry clearance was being considered.

26. There is no evidence before me regarding the role played by the appellants parents in their lives or the circumstances leading to Mr Aboagye assuming care and responsibility for the appellants, particularly given their respective ages. At the hearing before me, Mr Aboagye said that his brother (i.e. Kwame's father) continues to live in Konongo but is unable to assist his son because of his own ill-health. There is no evidence before me regarding the health of Kwame's father. Again, this is evidence that should readily be available. Because the evidence before me is so vague, I cannot discount the possibility that the appellants have other income or support that they have simply not disclosed to the Tribunal.

27. Even if I were to accept the evidence of Mr Aboagye (*which without more, I do not)* taken at its highest, the evidence demonstrates no more than the appellants living in a property owned by Mr Aboagye. That is not sufficient. Being a member of the household requires living for some period of time under the roof of a household that can be said to be that

the EEA national for a time when he or she had such nationality. That necessarily requires that whilst in possession of such nationality the family member has lived somewhere in the world in the same country as the EEA national, but not necessarily in an EEA state: KG Sri Lanka [2008] EWCA Civ 13, Bigia & Others [2009] EWCA Civ 79 and Moneke (EEA – OFM's) Nigeria [2011] UKUT 00341 (IAC).

28. The concerns that I have set out above regarding the limited evidence that is before the Tribunal do not in any event establish that the appellants are members of Mr Aboagye's household, or indeed ever have been. There is no evidence before me that that even begins to establish that Mr Aboagye has ever been, in colloquial terms, the head or member of a household of which the appellants have been part.

29. Taking a holistic view of the findings made by Judge Ennals regarding 'dependence' that I have preserved, and the evidence before me, I am not satisfied that the appellants have established, on balance, either dependency or membership of the EEA national's household such that they qualify as extended family members of their EEA Sponsor for the purposes of Regulation 8 of the 2016 EEA Regulations.

30. It follows that the appellants have not in my judgment established an entitlement to a Family Permit as extended family members as defined in Regulation 8(2) of the 2016 Regulations and the appeal is dismissed.

Notice of Decision

31. There is an error of law in the decision of FtT Judge Ennals promulgated on 30th June 2021 and that decision is set aside.

32. I remake the decision and dismiss the appeal under the EEA Regulations 2016

V. Mandalia

Upper Tribunal Judge Mandalia **5th January 2022**