



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04154/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 10 March 2022**

**Decision & Reasons Promulgated
On the 30 March 2022**

Before

**UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

Between

**MISS. SANIA GULZAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the Appellant
For the Respondent: Mr. Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appealed against a decision of First-tier Tribunal Judge Chana, promulgated on 26 March 2021, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse to issue a residence card to the Appellant as the family member of the Sponsor, an EEA national.
2. Permission to appeal was granted by First-tier Tribunal Judge Rhys-Davies on 9 June 2021 on the basis that it was arguable that the Judge had erred in concluding that the Appellant had no right of appeal.

3. In her Rule 24 response dated 13 August 2021 the Respondent did not oppose the application and invited the Tribunal to remit the matter to the First-tier Tribunal for a fresh hearing.

The hearing

4. The Appellant did not attend the hearing. The Tribunal considered that it was in the interests of justice to proceed with the hearing in the absence of the Appellant in accordance with rules 2 and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Mr. Whitwell made brief oral submissions.
5. At the hearing we allowed the appeal, finding that the decision involved the making of material errors of law. We remitted the appeal to the First-tier Tribunal to be reheard.

Error of law

6. We find that the Judge erred in her finding that the Appellant did not have a right of appeal. The Judge has referred to and relied on an unamended version of the 2016 Regulations. At [5] she states:

“I took the view at the hearing that the appellant does not have a right of appeal given her inability to meet Regulation 36(4) which required that extended family members are required to produce an EEA family permit or qualifying residence card in addition to a valid passport to enjoy a right of appeal. Ms. Gledhill after a short adjournment to consult with her superiors, agreed with this view.”

7. However, Regulation 36(4) was amended on 15 August 2019 to make clear that extended family members had a right of appeal by way of Regulation 36(4)(b)(v). This provides an alternative to producing the documents referred to above, and states that there is a right of appeal if an individual has “proof that the definition of “extended family member” in regulation 8(1) is met.”
8. The Respondent’s representative agreed with the Judge’s interpretation of the 2016 Regulations, presumably also in reliance on the unamended version. In his submissions, Counsel for the Appellant agreed that the Judge’s interpretation was correct, again in reliance on the unamended version. However, the 2016 Regulations as amended make clear that there is a right of appeal for an extended family member and therefore the Judge was wrong to conclude that she did not have jurisdiction. This is a material error of law.
9. Further, the Judge erred in her finding that the Appellant could not, in any event, meet the definition of an extended family member. At [12] she states:

“To be an “extended family member” of an EEA national, a person must be dependent upon the EEA national, or a member of his household, before coming to the United Kingdom. Under the **2006 Regulations**, the relationship could be through either blood or marriage, an extended family member being defined as “*a relative of an EEA national, his spouse or civil partner*”. But in the 2016 Regulations, this has become simply “*a relative of an EEA national*”. I therefore find that the appellant is not an extended family member of his EEA national sponsor.”

10. She found that the 2016 Regulations precluded applications made by the relative of the spouse of an EEA national. However, by way of amendments made on 15 August 2019, Regulation 8 was amended to make clear that ““relative of an EEA national” includes a relative of the spouse or the civil partner of an EEA national” (Regulation 8(7)). Therefore the Appellant, as the sister-in-law of the EEA national, is able to meet the definition of an extended family member. Mr. Whitwell confirmed at the hearing that the Respondent accepts that the Appellant can meet the definition subject to the issue of dependency.
11. Having decided that she did not have jurisdiction, the Judge made no findings as to the sole issue before her, which was whether or not the Appellant had shown that she was dependent on the Sponsor. We have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given that the Appellant has been deprived of a hearing, we remit the appeal to the First-tier Tribunal to be reheard.

Notice of Decision

1. The decision of the First-tier Tribunal involves the making of material errors of law. We set the decision aside.
2. The appeal is remitted to the First-tier Tribunal to be reheard.
3. The appeal is not to be listed before Judge Chana.
4. No anonymity direction is made.

Signed

Date 17 March 2022

Kate Chamberlain

Deputy Upper Tribunal Judge Chamberlain