



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

Appeal Number: UI-2022-002924
EA/07588/2021

THE IMMIGRATION ACTS

**Birmingham Civil Justice centre
On 1st December 2022**

**Decision & Reasons Promulgated
On 3rd January 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SASIKALA DEVI GNANASEKAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Kumar, UK Immigration Lawyers (Birmingham)

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

DECISION AND REASONS

1. The appellant is a national of India. On 17th December 2020, she applied for an EEA family permit under the Regulation 8 of the European Economic Area Regulations 2016 (“the 2016 Regulations), on the basis that she is the dependent family member of her sister, Ms Manjuladevi Soundaramourty, a French national exercising Treaty rights in the United Kingdom. Her application was refused by the respondent on 1st April

2021. The appellant's appeal was dismissed by First-tier Tribunal Judge Aziz for reasons set out in a decision promulgated on 6th April 2022.

2. The appellant claims the evidence before the First-tier Tribunal established that the appellant is being looked after on a full-time basis by her sister, the sponsor. It is said Judge Aziz refers to the only issue being "dependency", and he focused upon the condition set out in Regulation 8(2), but he failed to address the condition set out in Regulation 8(3) of the 2016 Regulations. Permission to appeal was granted by First-tier Tribunal Judge Adio on 12th May 2022.
3. Before me, Mr Williams, quite properly in my judgment, accepts the decision of First-tier Tribunal Judge Aziz is vitiated by a material error of law and must be set aside. He submits that the focus of the decision is plainly upon whether the condition set out in Regulation 8(2) of the 2016 Regulations is satisfied, and he accepts there is no consideration of the condition set out in Regulation 8(3).
4. I am satisfied that the decision of First-tier Tribunal Judge Aziz is vitiated by a material error of law and must be set aside. As to disposal, the standard directions issued to the parties require the parties to prepare on the basis that if there is an error of law in the decision of the First-tier Tribunal, the Upper Tribunal will go on to remake the decision. Neither party objects to me remaking the decision.
5. Mr Williams, again quite properly in my judgment, accepts there are sufficient unchallenged findings made by Judge Aziz to enable me to remake the decision. At paragraph [22] of his decision, Judge Aziz said:

"22. Having considered all of the evidence, I am prepared to make the following findings in the appellant's favour:

- (i) The appellant and EEA sponsor are related as biological siblings (the appellant has now submitted DNA evidence of this and the presenting officer conceded this point at the outset of the hearing).

- (ii) The appellant's husband died on 8 May 2020 (a copy of his death certificate is contained at pages 41-42 of the appellant's bundle).
- (iii) The appellant suffers from a mental impairment and currently requires care and supervision from an appropriate adult to meet her daily living and care needs. Contained at pages 10-13 of the appellant's bundle is a medical report from a consultant psychiatrist, Dr Anand Pratap (dated 11 January 2022). He concludes that the appellant suffers from a moderate level of intellectual disability and moderate impairment in developmental functioning and socioadaptive functioning. Given her cognitive capacity, it is mandatory that she live in a supervised environment otherwise it would be detrimental for her physical and mental well-being. I take no issue with the contents of the report.
- (iv) The EEA sponsor has been living with the appellant in India since around August 2020 and has been providing the daily care and assistance that she needs.
- (v) There are no other family members in India who are able to provide that assistance and that is why the EEA sponsor has continued to reside in India in order to look after her sister since the summer of 2020."

6. At paragraph [30] of the decision, Judge Aziz concluded there was simply a lack of credible evidence before him to persuade him that dependency can be made out. However, at paragraph [31], he went on to say:

"What I do find on the evidence before me is that following the appellant's husband's death in May 2020, that the appellant needed someone to look after her because of her intellectual impairment and because of a deterioration in her mental health. She was simply incapable of looking after herself and there was no one else in India who could undertake this role. Her sister in the United Kingdom went to India in August 2020 in order to provide that care and assistance and continues to reside in India with her. Her life in the United Kingdom is on hold whilst she continues to remain in India. She is not providing any financial support, because she is living with the appellant in India and acting as a carer for her. I am far from persuaded that she has ever provided her sister with any financial support. Whilst the EEA sponsor's actions are extremely noble and she can be quite rightly commended, I am afraid that this application has been manufactured in order to give the appearance that it falls within the ambit of Regulation 8, by falsely asserting that there has been dependency since 1999 when this has not been the case. Whilst there are compassionate reasons for why the respondent ought to grant the appellant entry clearance (and I would strongly urge them to consider these compassionate circumstances in light of my findings above), there is simply a lack of evidence before me to show that the dependency test has been met".

7. As far as is relevant here, Regulation 8 of the Immigration (European Economic Area) Regulations 2016 provided:

“Extended family member”

8.—(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), (3), (4) or (5).

...

(3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA national.

8. Mr Williams accepts that on the findings made by the Judge, if the Judge had considered whether the condition set out in Regulation 8(3) is satisfied, the Judge is likely to have concluded that the condition is satisfied, and the appeal is likely to have been allowed.
9. In remaking the decision, I am quite satisfied that on the unchallenged findings made by Judge Aziz that I have referred to and set out above, the appellant has established an entitlement to a family permit as an extended family members as defined in Regulation 8(3) of the 2016 Regulations and the appeal is allowed.

Notice of Decision

10. There is an error of law in the decision of FtT Judge Aziz promulgated on 6th April 2022 and that decision is set aside.
11. I remake the decision and allow the appeal under the EEA Regulations 2016 as preserved by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations (SI 2020 1309).

V. Mandalia

Upper Tribunal Judge Mandalia

1st December 2022