



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case Nos: **UI-2021-001895**  
**UI-2021-001896**  
First-tier Tribunal No: **EA/50975/2021**  
**EA/50976/2021**  
IA/04245/2021 & IA/04458/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 16 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Tahir Hussain**  
**Asma Rani**  
**(no anonymity order made)**

Appellant

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellants: Mr Aziz, WA Law Ltd  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 10 January 2023**

**DECISION AND REASONS**

1. The Appellants are a husband and wife, both nationals of Pakistan. They appeal with to this Tribunal with permission against the decision of the First-tier Tribunal (Judge Andrew Davies) to dismiss their linked appeals under the Immigration (European Economic Area) Regulations 2016.
2. The Appellants both sought permission to enter the United Kingdom on the grounds that they were the extended family members of Mr Malik Shahid Hussain Begum. Mr Begum is a national exercising treaty rights in the United Kingdom. It is not in dispute that he is the brother of Mr Tahir Hussain, and so he is the

brother-in-law of Ms Asma Rani. The Appellants averred that they are dependent on Mr Hussain to meet their needs and that they therefore meet the definition at Regulation 8.

3. The ECO did not accept that the dependency was as claimed, or that Mr Hussain would be in a position to support the Appellants upon their arrival in the UK. Judge Andrew Davies found in the Appellant's favour in favour of the former, but agreed with the latter and so the appeals were dismissed.
4. The basis of the challenge to the Upper Tribunal is that Judge Andrew Davies erred in his interpretation of Regulation 8. Mr Aziz submits that having found as fact that the Appellants are currently dependent upon Mr Hussain to meet their essential living needs, the appeal should have been allowed without further enquiry. It is submitted that paragraphs 30-33 of the First-tier Tribunal decision, which analyse the Sponsor's means in the UK, are otiose.

### **Discussion and Findings**

5. Regulation 8 of the Immigration (European Economic Area) Regulations 2016 reads:

- 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).
  - (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) is 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.
  - (3) ...
  - (4) ...
  - (5) ...
  - (6) In these Regulations, "relevant EEA national" means, in relation to an extended family member—
    - (a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;...
  - (7) ...

6. Mr Aziz is correct to say that the effect of Judge Andrew Davies' findings of fact is that the requirements of regulation 8 (2) are met. The Appellants are relatives of the EEA national in question, and on his findings they are, so long as they remain in Pakistan, currently dependent upon him.
7. That is not however the end of the matter. That is because qualification under Regulation 8 does not confer an automatic right of entry. Regulation 12 is concerned with the circumstances in which an EEA family permit will be issued. As I have highlighted, it distinguishes between different classes of applicants. For the purpose of these appeals it is pertinent to note that there is no obligation upon an entry clearance officer to grant a permit to extended family members:

**Issue of EEA family permit**

- 12.-** (1) An entry clearance officer **must** issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national...
- (2) An entry clearance officer **must** issue an EEA family permit to a person who applies and provides evidence demonstrating that, at the time at which the person first intends to use the EEA family permit, the person—
- (a) would be entitled to be admitted to the United Kingdom because that person would meet the criteria in regulation 11(5)...
- (3) An entry clearance officer **must** issue an EEA family permit to—
- (a) a family member who has retained the right of residence; or
- (b) a person who is not an EEA national but who has acquired the right of permanent residence under regulation 15.
- (4) An entry clearance officer **may** issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
- (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
- (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
- (c) **in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.**
- (5) **Where an entry clearance officer receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the entry clearance officer must give reasons justifying the**

**refusal unless this is contrary to the interests of national security.**

(6) ...

8. Mr McVeety relies on regulation 12 (4)(c). He points out that upon examining the circumstances of this family, the ECO was not satisfied that the Appellants would continue to be 'extended family members' after their arrival in the UK. Mr Hussain has his own family of a wife and three children, he has already sponsored both his parents to join him in the UK, and he has limited resources. In those circumstances it would not be "appropriate" to grant entry. On appeal there was no evidence capable of displacing that reasoning. Mr Hussain accepted under cross examination that he could not accommodate these Appellants as well as all the other people he is responsible for, and so he would secure another property, a proposition Judge Andrew Davies found to be "unrealistic" given his existing commitments. The Judge was not persuaded that the significant levels of Universal Credit being paid into Mr Hussain's bank account would stretch to paying for the Appellants as well. Mr McVeety submitted that this being the case, the Tribunal had been right to dismiss the appeals.
9. I am satisfied that Mr McVeety's interpretation is correct. The Appellants did meet the requirements of regulation 8 at the date of hearing but both the ECO and Judge Andrew Davies concluded that it was nevertheless not appropriate for entry to be granted, because in effect they would cease to meet the definition at regulation 8(2) upon entry. I am not persuaded by Mr Aziz's suggestion that the applicable UKVI policy guidance says otherwise. He took me to the policy guidance Free Movement Rights: extended family members of EEA nationals (v 7.0) and this passage at page 18:

Continuing dependency or member of EEA national's household in the UK

Regulation 8(2)(a)(ii) of the 2016 regulations states a person only continues to satisfy the requirements of regulation 8 if they remain dependent upon the EEA national or a member of their household.

This is of course true, but that is not something capable of establishing an error of law in this case. If anything it supports the Judge's reasoning which was to the effect that there is no point granting entry clearance to the Appellants if they will cease to qualify upon arrival.

### **Decisions**

10. The appeals are dismissed.
11. There is no order for anonymity.

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Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber