



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

Appeal Numbers: OA/22257/2013
OA/22259/2013

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre On 31 March 2015	Decision and Promulgated On 21 May 2015	Reasons
---	--	----------------

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**IRAM ILYAS (1)
MUHAMMAS SAQIB (2)**

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

Representation:

For the Appellant: Mr M Iqbal, instructed by Addison and Khan Solicitors
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are mother and son. Both are citizens of Pakistan and were born respectively on 26 July 1993 and 29 January 2012. They applied to join the first appellant's husband, who is the second appellant's father, who has a right of residence in the UK as the extended family member of his brother, who is a German national exercising EU law rights in the UK.

2. On 4 December 2013 they were refused EEA family permits under regulation 12 of the Immigration (European Economic Area) Regulations 2006. Their appeals against those decisions were dismissed by First-tier Tribunal Judge Ross in a decision and reasons statement promulgated on 10 November 2014. They have been granted permission to appeal to the Upper Tribunal against that decision.
3. Judge Ross found that although the appellants were related as claimed, they could not rely on regulation 7 because they were not the direct relatives of the EEA national (who is the brother in law of the first appellant) or his spouse. Therefore, they could only rely on regulation 8 (extended family members). Judge Ross found that the appellants had failed to demonstrate that they were dependent on the EEA national or that they were members of the same household as him. Judge Ross went further and found that the evidence failed to show that the appellants were dependent upon the husband of the first appellant. The appellants had also relied, in the alternative, on article 8 of the human rights convention. Judge Ross found that they could not benefit from the provisions of appendix FM, but he only looked at section ADR (Adult Dependent Relatives).
4. The grounds of appeal argue that Judge Ross failed to consider relevant evidence when reaching his conclusions. Evidence of money transfers direct from the EEA national to the first appellant had been provided but had been ignored. That evidence was supported by a sponsorship declaration. The failure to have regard to this evidence meant that the decision in relation to dependency was fundamentally flawed. The grounds also argue that Judge Ross failed in his application of regulation 8(4) because he failed to have proper regard to the provisions of section ADR of appendix FM to the immigration rules.
5. Mr Iqbal relied on these grounds and added the following. He wished to focus on whether the appellants could be regarded as members of the household of the EEA national, a factor on which Judge Ross had made no finding. Mr Iqbal took me to the end of paragraph 9 of the statement of reasons where it was clear that Mr Khan, who represented the appellants in the First-tier Tribunal, had made submissions that indicated the appellants lived in the sponsor's household. In relying on this aspect, Mr Iqbal reminded me of the guidance given by the Upper Tribunal in RK (OFM - membership of household - dependency) India [2010] UKUT 421 (IAC) and Moneke (EEA - OFMs) Nigeria [2011] UKUT 00341(IAC).
6. Mr Smart said he had little to add to the rule 24 response. The Secretary of State did not accept that the appellants accepted they could not meet regulation 7 because they were not directly related to the EEA national and therefore had to meet the criteria set out in regulation 8. The appellants had failed to show that they were dependent on the EEA national, there being only two money transfers direct from him to the first appellant. Mr Smart reminded me of the guidance given by the Upper Tribunal in Reyes (EEA Regs: dependency) [2013] UKUT 314 (IAC) and argued that it was not

possible to regard the appellants as dependent on the EEA national. With regard to the issue of whether the appellants could be regarded as members of the EEA nationals household, Mr Smart argued, as indicated at paragraph 7 of the statement of reasons, the appellants lived in the house of the parents of the first appellant.

7. In reply, Mr Iqbal argued that the oral evidence given at the First-tier Tribunal hearing included evidence that the remittances sent by the first appellant's husband included money provided by the EEA national. This evidence had not been properly assessed.
8. Having heard the competing arguments, I reserved my decision, which I now give with my reasons.
9. Although I have some sympathy with the appellants regarding the quality of Judge Ross's statement of reasons, which is significantly lacking in a clear examination of the evidence or legal issues arising, ultimately his decision is sound. None of my concerns regarding quality are sufficient to find a material error on a point of law and therefore my decision is to uphold the decision.
10. The appellants' applications for EEA family permits were made on 8 November 2013. The applications were accompanied by a covering letter. That letter clearly stated two key facts.
11. First, that the applications were being made on the basis that the appellants could derive rights of residence as the extended family members of the same EEA national from whom the first appellant's husband had derived a right of residence. There was no attempt by the appellants to rely simply on the fact that the first appellant's husband had derived a right of residence; they clearly realised they had to establish they derived a right of residence from the same EEA national implying they knew they could not rely simply on their relationship to the first appellant's husband. It is clear from these points that the appellants were seeking to rely on regulation 8(2)(a).
12. Secondly, having established that the EEA national was a qualified person, the covering letter included the following paragraph:

Please note in order to meet our essential living needs, I [the first appellant] and my son are financially and emotionally dependent on my husband. Moreover, the family head is willing to support us financially and emotionally as well.

The covering letter, clearly provided by the lawyers representing the appellants, went on to outline various legal authorities about dependency and membership of households. None of the cases cited above is mentioned. Nor is there reference to the decision of the Court of Justice of the European Union in SSHD v Rahman and another [2013] Imm AR 73, which dealt with the issues referred to that Court by the Upper Tribunal in

MR and others (EEA extended family members) Bangladesh [2010 UKUT 449 (IAC).

13. Obviously, the admission in the covering letter when taken with the very limited evidence of direct support from the EEA national in the UK means that the decision of Judge Ross that dependency has not been established must be correct. His failure to refer to evidence would be an error on a point of law were it not for the fact that it is clear that the decision is the only possible outcome in respect of the assessment of dependency, given in particular the judgment of the Court of Justice in Rahman and the Upper Tribunal's guidance in Reyes. The admission in the covering letter points to the fact that the appellants were not dependent on the EEA national, his role in the application process being to confirm that he was willing to offer financial and emotional support as well, not that he had provided such assistance.
14. The other aspect, whether the appellants could be regarded as members of the household of the EEA national is a non-starter because, as Judge Ross recorded, the appellants lived in the household of the parents of the first appellant. Although they visit from time to time the home of the EEA national's family in Pakistan, visits would not make them members of that household. I accept that there is very limited jurisprudence on this issue, but the cases referred to (RK and Moneke) both indicate a sense of permanence about the household arrangement rather than the transient nature relied on by the appellants. It is also clear from the case law that where a person seeks to rely on being a member of an EEA national's household, they must show that they have lived with the EEA national overseas. No evidence to that effect has ever been provided.
15. With regard to whether Judge Ross had proper regard to whether the appellants could succeed under section ADR of appendix FM to the immigration rules by analogy (as required by regulation 8(4)), I acknowledge that Judge Ross does not appear to have looked at this carefully. However, the following points are clear. The relative on who the appellants relied is the brother in law of the first appellant. As such, there would be no need to address any other part of appendix FM in relation to regulation 8(4).
16. Section ADR required evidence that the appellants would need to show that as a result of age, illness or disability, they require long term personal care to perform everyday tasks. Details of how that can be established is set out in appendix FM-SE. The appellants provided no evidence whatsoever to meet this provision, which is not related to the immigration status of the EEA national sponsor. The fact the appellants failed to provide any evidence whatsoever means there could only be one possible outcome to this ground of appeal which is the decision reached by Judge Ross. The fact his reasoning is unsound is troubling but does not identify that his decision was wrong in law.

17. I add one further observation. Neither party referred me to the Court of Appeal's judgment in Soares v SSHD [2013] EWCA Civ 575. Although it is not wholly on all fours with this case, there are a number of similarities. It makes clear that dependence on the EEA national must be established prior to entry and that dependence on a non-EEA national resident in the UK would not itself meet the requirements of regulation 8. The reasoning in that case supports the conclusion to which I have come, that the appellants have not made out that any legal error in Judge Ross's statement of reasons is material.

Decision

The appeal to the Upper Tribunal is dismissed because the decision of First-tier Tribunal Judge Ross does not contain an error on a point of law sufficient to set it aside.

Signed

Date

Deputy Upper Tribunal Judge McCarthy