



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

**Case No: UI-2022-003440**  
**First-tier Tribunal No:**  
**EA/11358/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 21 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**Muhammad Kaab**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: Mr R Ahmed, of Counsel, instructed by Apex Legal Services  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 2 May 2023**

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Pakistan born on 27<sup>th</sup> July 1996. He applied for an EEA family permit to come to the UK under the Immigration (EEA) Regulations 2016 on 31<sup>st</sup> December 2020 as the extended family member of his cousin, Mr Imtiaz Mohammed, who is a citizen of France. His application was refused on 20<sup>th</sup> April 2021. His appeal against the decision was dismissed by First-tier Tribunal Judge Peer in a determination promulgated on the 23<sup>rd</sup> February 2022.
2. Permission to appeal was granted by Upper Tribunal Judge Blundell on 4<sup>th</sup> October 2022 on the basis that it was arguable that the First-tier

judge had erred in law in dismissing the appeal as arguably having found that the appellant was related as claimed and dependent on the sponsor he was entitled to succeed in his appeal. It is arguable that the First-tier Tribunal erred in the approach to the question of the appellant joining the sponsor; erred in the consideration of Dauhoo (EEA Regulations - Reg 8(2)) [2012] UKUT 79 and in the consideration of discretion at Regulation 12.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to consider whether any such error was material and the decision should be set aside.

#### *Submissions - Error of Law*

4. In the grounds of appeal, in short summary, it is set out that the First-tier Tribunal made the following positive findings in the decision: that the sponsor has a French passport (paragraph 4); that the sponsor and appellant are related as claimed (paragraph 32); that the sponsor is exercising Treaty rights and thus a qualified person (paragraph 34); and that the appellant is dependent on the sponsor for his essential living needs in Pakistan (paragraphs 35 to 39). The First-tier Tribunal, it is argued, ought to have allowed the appeal on this basis. It erred in law in finding that the appellant's did not succeed as a result of the appellant going to live temporarily at a separate address to the sponsor when this was only temporary and there was no need for him to be a member of the same household as well as dependent anyway.
5. Ms Ahmed for the respondent informed the Upper Tribunal that she agreed that the grounds of appeal identified material errors of law, and that the appeal should be remade allowing it on the basis of the positive findings of the First-tier Tribunal Judge.

#### *Conclusions - Error of Law*

6. The appeal is allowed by consent on the basis of the grounds as set out above which correct identify that the First-tier Tribunal made findings that entitled the appellant to succeed in his appeal, and then became confused on matters which were not relevant to the outcome.
7. It is therefore fair and correct to allow the appeal on the basis of the findings of the First-tier Tribunal identified in paragraph 4 above which are the relevant findings demonstrating that the appellant has shown on the balance of probabilities that he is an extended family member under the retained aspects of the Immigration (EEA) Regulations 2016.

#### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of legal errors.
2. I set aside the decision of the First-tier Tribunal.

3. I re-make the decision in the appeal by allowing it under retained EEA law.

**Fiona Lindsley**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2<sup>nd</sup> May 2023**