



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/47926/2014

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 30 July 2015

Decision and Reasons Promulgated  
On 14 August 2015

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**HEENA SAEED**

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Marrington from Alan Ahmed Ltd

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Edwards promulgated on 10 March 2015. He dismissed the Appellant's appeal against a refusal of a Residence Card as confirmation of her right to reside in the United Kingdom as a dependent family member under the Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations') of the sponsor who is a Portuguese citizen exercising treaty rights in the United Kingdom. .

### Background

3. The Appellant was born on 27 December 1986 and is a national of Pakistan.
4. 8 December 2010 the Appellant's parents made an application for entry clearance to the United Kingdom as family members of the sponsor Faisal Saeed their son a Portuguese citizen exercising treaty rights. Their application was refused on the basis only that a false document had been produced. Their appeal against refusal was allowed on 18 August 2011 at a hearing before First –tier Tribunal Judge Davies.
5. On 11 May 2012 the Appellant entered the United Kingdom as a Tier 4 (General) Student with leave valid from 22 April 2012 until 12 November 2014.
6. 11 June 2014 the Respondent curtailed the Appellant's leave because her college was de registered.
7. 21 August 2014 the Appellant made the application subject of the appeal before First-tier Tribunal Judge Edwards.
8. On 13 the Secretary of State refused the Appellant's application on the basis that:
  - (a) There was insufficient evidence that the Appellant was related as claimed to Faisal Saeed.
  - (b) There was insufficient evidence that she was dependent on the Sponsor either prior to coming to the United Kingdom or since she had entered the United Kingdom or that she has been or is a member of his household.

### The Judge's Decision

9. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Edwards ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found;
  - (a) The Appellant was not part of the Sponsors household before arriving in the United Kingdom.

- (b) The remittances sent to Pakistan helped with the family expenses and improved their material conditions but did not establish dependency.
  - (c) The Appellant therefore did not meet Regulation 8(2) (a) and 8(2) (c).
  - (d) He also found that being in the United Kingdom as a student envisages a return to the home country and therefore the Appellant could not be a member of a household.
10. Grounds of appeal were lodged arguing that in essence the Judge had applied the wrong version of the EEA Regulations and failed to take into account the Immigration (EEA) (Amendment)(No2) Regulations 2012 removed the requirement that the Appellant resides in the country in which the EEA national also resides in order to be a dependent; the Judge also took into account an irrelevant fact, that the Appellant was a student, in order to determine an EEA case.
11. On 2 June 2015 First-tier Tribunal Judge Hollingworth gave permission to appeal.
12. At the hearing I heard submissions from Mr Marrington on behalf of the Appellant that :
- (a) He relied on his skeleton argument at pages 121-124 of the bundle.
  - (b) The refusal letter set out the correct version of the Regulations but the Judge used the wrong version.
  - (c) The Judge therefore failed to consider whether the Appellant could be a member of the sponsor's household when they were not living in the same country
  - (d) The Judge also rules out the possibility of being an extended family member where the Appellant was here on another basis, as a student under the Immigration Rules.
  - (e) The Judge failed to address the argument advanced that as an unmarried Muslim woman she is the dependent of someone. Her parents came to the United Kingdom in 2011 as the dependents of her brother the Sponsor so how could she be dependent on anyone other than her brother.

(f) There was no clear finding as to whether she was now dependent on her brother the sponsor.

(g) He was content for the decision to be remade on the basis of the papers before me.

13. On behalf of the Respondent Mr Harrison submitted that :

(a) He relied on the Rule 24 response.

(b) He had to concede that the Judge had applied the wrong version of the Regulations and therefore the decision he made must be suspect.

(c) He did suggest there were question marks in relation to the chronology which might suggest that the findings about dependency were sustainable.

### **Legal Framework**

14. Regulation 8 of the EEA Regulations 2006 was amended by the Immigration (EEA) (Amendment)(No2) Regulations 2012 by removing the requirement that the appellant resides in the country in which the EEA national also resides and now reads:

#### ***“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 the conditions in paragraph (2), (3), (4) or (5).*

*(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—*

*(a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;*

*(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or*

*(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.”*

15. In relation to the issuing of a residence card to extended family members the Regulations provide at 17(4)-(5):

*“(4) The Secretary of State may issue a residence card to an extended family member not falling within regulation 7(3) who is not an EEA national on application if–*

*(a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and  
(b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.*

*(5) Where the Secretary of State receives an application under paragraph (4) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security”*

16. In relation to the definition of dependency I take into account Moneke (EEA – OFMs) Nigeria [2011] UKUT 00341(IAC) where the Tribunal accepted that the definition of dependency was accurately captured by the current UKBA ECIs which read as follows at ch.5.12: *“In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations: Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her essential needs – not in order to have a certain level of income. Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources. There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment. The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived.”* At paragraph 42 the Tribunal went on *“We of course accept (and as the ECIs reflect) that dependency does not have to be “necessary” in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity.”*

### **Finding on Material Error**

17. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.

18. I am satisfied that the Judge made findings in this case in relation to what he understood were the relevant issues based on an incorrect version of the Regulations. This error I consider to be material since had the Tribunal applied the correct version of the Regulations the outcome could have been different. That in my view is the correct test to apply.

19. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety to be remade. Mr Marrington indicated that he was content for me to remake the decision on the basis of the evidence placed before the First-tier Tribunal and the consolidated bundle that he had prepared for this hearing. He would not have sought to call any additional evidence.

### **Remaking the Decision**

20. The Appellant is a single 28 year old national of Pakistan. I accept that the Appellant arrived in the United Kingdom on 11 May 2012 as a Tier 4 Student with valid leave until 12 November 2014. Her leave was curtailed on 11 June 2014 and she applied for a residence card as the extended family member of her brother Faisal Saeed a Portuguese citizen who I am satisfied has been exercising treaty rights in the United Kingdom as a worker since 2006. Mr Saeed acquired a right of permanent residence in 2010.

21. It was recognised in Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 79 (IAC) that under the scheme set out in Regulation 8 (2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an “extended family member” in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the United Kingdom and while the Regulations have been amended since this decision I am satisfied that the principle of meeting the Regulation in these different ways survives the amendment.

22. I have therefore started by considering whether there is evidence of pre arrival dependency in Pakistan given the number of money transfer receipts in the Appellant's bundle. I accept that the Appellant was living with her parents at an address in Lahore prior to coming to the United Kingdom as the same address appears for both her and her parents in the money transfer receipts that are found in the bundle.
23. I am satisfied that prior to the arrival of the Appellant's parents in the UK to live with their son there is abundant evidence of financial support from Mr Saeed the his father at pages 87-11 of the Appellant's bundle: the sums sent are regular and certainly in 2010 and 2011 there are monthly remittances of between £100 and £250 which in the context of living in Pakistan are not insubstantial sums. At that time I accept that the Appellant was living with her parents as is common with single unmarried women in Pakistan and she was supported by the money they received from their son. I note that all of the remittances during that period, a period when she was living with her parents, the remittances were made out to her father. I accept that given that she was living with them they supported her financially with the money sent from the Sponsor and therefore the reality of the situation was that the whole of his family in Pakistan were dependent on Mr Saeed the Sponsor in the UK.
24. While there is little documentary evidence of what part these remittances played in relation to the family finances in Pakistan I accept that the Respondent must have accepted that the Appellant's parents were as a matter of fact dependents of their son as the decision of First-tier tribunal Judge Davies of 18 August 2011 makes clear that in allowing the appeal against a refusal of a family permit for the Appellant's parents the only issue in the case was the validity of a birth certificate, dependency was not in issue. The Judge allowed the appeal and the Appellant's parents came to live with the sponsor at his home in the United Kingdom as dependent family members.
25. Following the success of their appeal the Appellant's parents came to live in the United Kingdom. The fact that the Appellant continued to be dependent on her brother receives support in my view from the fact that from the end of 2011 the remittances, in the same significant sums, are then made payable to the

Appellant rather than her father as previously up until the point where she came to the UK in May 2012.

26. On arrival in the United Kingdom the Appellant came to live with her brother the sponsor and her parents at the Sponsors home address as there are a number of documents with that show they all share the same address. I note that her father died in 2013 but she continued to live at the sponsors address I have not been directed to any caselaw or provision of the Regulations that suggests that the fact that the Appellant came as a student under the Immigration Rules prevents her from being a member of her sponsors household for the purpose of meeting the definition of extended family member.

27. I am satisfied that I am not required to find prior and present connection to the EEA sponsor but it does not have to be in the same capacity and in this case I am satisfied that prior to her arrival the Appellant was a dependent of the sponsor but upon her arrival the evidence is clearer that she is a member of his household: I do not exclude the possibility of her also being financially dependent in the United Kingdom the evidence is simply less clear.

28. Given that the issue of a residence card is discretionary my findings of fact are made in the knowledge that the decision will have to revert to the Respondent for a lawful decision.

## **Decision**

**29. There was an error on a point of law in the decision of the First-tier Tribunal such that the decision is set aside**

**30. I remake the appeal.**

**31. I allow the appeal under the EEA Regulations to the limited extent that it is remitted to the Respondent for a lawful decision to be made.**

Signed

Date 11.8.2015

Deputy Upper Tribunal Judge Birrell