



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

Case No: UI-2023-004445  
First Tier No: EA/02234/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 28 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MUHAMMAD BILAL**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: The sponsor attended in person

For the Respondent: Ms Newton, Senior Presenting Officer

**Heard at Manchester Civil Justice Centre on 12 August 2024**

**DECISION AND REASONS**

1. By a decision dated 9 March 2024, I set aside the decision of the First-tier Tribunal. I did so for the following reasons.

1. The appellant was born on 8th January 2002 and is a citizen of Pakistan. He appeals under regulation 36 of the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) against a decision of the respondent dated 29 January 2020 to refuse his application for an EEA family permit. Permission was granted in the First-tier Tribunal as follows:

1. The in time grounds assert, in summary, that the judge erred in law by finding that the appellant has been dependent and continues to be dependent upon the sponsor in the UK but would not have dependency in the future. That this is not in accordance with Regulation 8 of the EEA Regulations 2016. The judge has made an error of law by considering the issue of future dependency.

2. The grounds are arguable. The judge clearly and demonstrably considered all of the evidence and the law. However, it is apparent that the judge has indicated that Regulation 8(2)(a)(i) states that the extended family member remains dependent upon the sponsor or a member of the household. The wording of the regulation 8(2)(b) states that the extended family member is dependent upon the EEA national. The judge found that the appellant is dependent upon the sponsor. It is arguable that the judge erred in law in this respect.

2. The respondent's notice of refusal states as follows:

You state that your uncle Muhammad Nawaz is an Italian national. You have provided evidence that your sponsor holds an Italian passport.

- You have applied to accompany your EEA sponsor in the UK, however, it is noted that your EEA sponsor currently resides in Italy and there is no evidence to suggest that he intends to remain in the UK upon arrival and continue to support you as required. If you are visiting the UK and intend to stay for a short period, we would expect to see proof of return flights. However, if you intend to remain in the UK more permanently, we would expect to see proof that your sponsor plans to reside with or support you going forward.

- It is also noted that you have not provided sufficient evidence regarding your own financial situation. The utility documents from Pakistan do not demonstrate your financial situation. Moreover, the money transfers you have submitted are insufficient in proving prolonged and consistent dependency upon your EEA national sponsor. In the absence of this evidence this department cannot sufficiently establish your dependency, either wholly or partly, upon your EEA sponsor because we are unable to establish if you need the financial support from the EEA national to meet your essential needs.

I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all of the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.

3. I have highlighted part of the final paragraph. It is clear that the respondent considered that the appellant was required to meet all the requirements of regulation 12 but had not done so. Regulation 12 provides:

**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 and—

(a) the EEA national—

(i) is residing in the United Kingdom in accordance with these Regulations; or

(ii) will be travelling to the United Kingdom within six months of the date of the application and will be an EEA national residing in the United Kingdom in accordance with these Regulations on arrival in the United Kingdom; and

(b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there.

(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); and

(b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom because that person would meet the criteria for admission in regulation 11(5)(a)) be accompanying to, or joining in, the United Kingdom any person from whom the right to be admitted to the United Kingdom under the criteria in regulation 11(5) is derived.

(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) An EEA family permit issued under this regulation must be issued free of charge and as soon as possible.

(7) But an EEA family permit must not be issued under this regulation if the applicant or the EEA national concerned is not entitled to be admitted to the United Kingdom as a result of regulation 23(1), (2) or (3) or falls to be excluded in accordance with regulation 23(5).

(8) An EEA family permit must not be issued under this regulation to a person (“A”) who is the spouse, civil partner or durable partner of a person (“B”) where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.

Regulation 8 provides:

“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).

(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) 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.

(4) The condition in this paragraph is that the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national.

(5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national, and is able to prove this to the decision maker.

(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;

(b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.

(7) In paragraphs (2) and (3), "relative of an EEA national" includes a relative of the spouse or civil partner of an EEA national where on the basis of being an extended family member a person—

...

4. At [34], the judge found:

I accept therefore on the balance of probabilities that the Appellant in Pakistan has been dependent on the sponsor. He is currently dependent upon him. There is a shortfall in the family income which the sponsor makes up. His support has been provided over a series of years.

5. Mr Tan, for the respondent, accepted that, had the judge's analysis ended there, he should have allowed the appeal. However, at [35], the judge continued:

However, that is not the end of the matter. Firstly, regulation 12 of the 2016 Regulations is applicable. Qualification under regulation 8 does not confer an automatic right of entry. Regulation 12 concerns the circumstances in which a family permit will be issued. There is no obligation on the Respondent to grant a permit to an extended family member. The regulation refers to the question of whether "in all the circumstances" it is

appropriate to do so. An extensive examination of the applicant's circumstances must be carried out.

6. I consider that the judge has not erred in law in finding that the whole of regulation 12 had to be satisfied if the appellant were to succeed; that is clear from the passage in the refusal notice highlighted above. In the part of his analysis which follows at [36] *et seq*, the judge first found that:

On the sponsor's account, it is likely that he would be providing some support for his brother and sister-in-law who live in his house and whom he sponsored to the UK as well as his sister and her family including the Appellant. It is difficult to see how the sponsor can maintain such levels of support on a weekly wage of little more than the national minimum wage (currently £10.42 per hour for persons over the age of 23). His brother whom he supported to come to the UK on a dependency basis now works but has an even lower income.

Moreover, regulation 8(2)(a)(i) of the 2016 Regulations indicates that the person only continues to satisfy the regulation 8 definition of extended family member if he **remains** dependent upon the EEA or a member of the household. The evidence in this case produced by the Appellant or his sponsor is that a job has been arranged for the Appellant on a full-time basis. The sponsor stated that he was looking for accommodation for the Appellant. While he also said that the Appellant would live with him, that is at odds with both his search for accommodation and the fact that a hotel was booked for a month despite the sponsor living at his address in Belgrave Road.

7. In my opinion, the judge here misunderstands part of regulation 8. Continuing dependence is only a requirement of 8 (2) (b) (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'*). The appellant is still resident abroad and *'wants to join the EEA national in the United Kingdom.'* (8 (2) (b) (i)). The judge has considered the future arrangements when only current dependency is required.

8. However, the judge reached alternative conclusions at [39]:

I am satisfied that it is more likely than not that the Appellant would immediately enter into full-time work and live in his own accommodation and therefore does not satisfy the requirements of regulation 8. Alternatively, I find it unrealistic that the sponsor has the resources to accommodate the Appellant, financially support him in the UK where the cost of living is so much higher than in rural Pakistan, support his sister in Pakistan and continue to provide some support for his brother and wife whom he previously sponsored.

9. I find that the use of the present tense in this paragraph obscures the meaning. It is unclear whether the judge is considering current or future dependency. It appears that the judge finds that the sponsor does not support the appellant (*'I find it unrealistic...'*) notwithstanding his finding at [34] that *'the Appellant in Pakistan has been dependent on the sponsor. He is currently dependent upon him.'* The losing party (i.e. the appellant) should be clear exactly why he has lost the appeal. I am not satisfied that the judge's decision is expressed with sufficient clarity to achieve that end. It is for that reason I have decided to set aside the decision and, rather than remake the decision allowing the appellant's appeal against the Entry Clearance Officer's decision on the basis of paragraph [34], to remake the decision after a resumed hearing in the Upper Tribunal. At that hearing, the Upper Tribunal will hear the appeal

afresh and will consider all the relevant requirements of the Regulations, including Regulation 12(4)(C).

**Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The decision will be remade in the Upper Tribunal following a hearing *de novo*.

2. At the hearing on 12 August 2024 at Manchester, Ms Newton, Senior Presenting Officer, told me that the respondent had looked at the matter again in the light of my error of law decision. She said that the respondent now considered that the Upper Tribunal should remake the appeal allowing the appeal. The sponsor was present at court and I notified him accordingly.

**Notice of Decision**

The Upper Tribunal has remade the decision. The appellant's appeal against the decision of the respondent dated 29 January 2020 is allowed.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 12 August 2024**