



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/28601/2013  
IA/28622/2013  
IA/28625/2013  
IA/28626/2013  
IA/28627/2013  
IA/28629/2013

**THE IMMIGRATION ACTS**

Heard in Birmingham  
On 11 November 2014

Decision and Reasons Promulgated  
On 4 December 2014

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

(1) ABIDA EJAZ  
(2) AYSHA EJAZ KHAN  
(3) UMAMA EJAZ  
(4) BUSHRA EJAZ  
(5) ABDUL REHMAN EJAZ  
(6) MOHAMMAD ASSAD ULLAH KHAN

Respondents

**Representation:**

For the Appellant: Mr N. Smart, Senior Presenting Officer

For the Respondent: Mr A. Pipe, instructed by Khan & Co Solicitors

**DECISION AND REASONS**

**Introduction**

1. The claimants each appealed to the First-tier Tribunal against decisions of the Secretary of State of 21 June 2013 refusing to issue them with EEA Permanent

Residence Cards. It is not in dispute that the first claimant is married to a Mr Ejaz Ahmed, a citizen of Germany, and that the second to sixth claimants are their children.

2. The First-tier Tribunal allowed each of the claimants' appeals in a combined determination of the 7 April 2014.

**(1) Abida (IA/28601/2013) & Mohammed (IA/28629/2013)**

3. On 24 April 2014 First-tier Tribunal Judge Foudy purported to grant the Secretary of State permission to appeal to the Upper Tribunal in relation to each of the six above named claimants.
4. It is accepted by the Secretary of State that the grants of permission made in relation to the appeals of Abida Ejaz and Mohammad Assad Ullah Khan are to be treated as a nullity because no application was made for permission to appeal to the Upper Tribunal in relation to these claimants. The First-tier Tribunal has no jurisdiction to grant permission to appeal of its own motion; it can only do so upon receipt of an application by one of the parties to the appeal.

**(2) Abdul (IA/28627/2013)**

5. Although permission to appeal to the Upper Tribunal was sought by the Secretary of State, and granted by Judge Foudy, in relation to the Abdul Rehmen Ejaz, at the hearing before the Upper Tribunal Mr Smart sought permission for the Secretary of State to withdraw her case in relation to this claimant – the application being based upon the Secretary of State's acceptance that she had inaccurately calculated Abdul's age as at the date of the hearing before the First-tier Tribunal and that now, having identified that he was under the age of 21 as of that date, she accepts he is entitled to a Permanent Residence Card. Unsurprisingly Mr Pipe did not object to such permission being granted.
6. I grant permission to the Respondent to withdraw her case in relation to Abdul and, having done so, conclude that it has not been demonstrated by the Secretary of State that, in relation to Abdul, the First-tier Tribunal's determination contains an error of law capable of affecting the outcome of the appeal. The First-tier Tribunal's determination is, therefore, maintained insofar as it allows Abdul's appeal against the Secretary of State's decision to refuse to issue him with a EEA Permanent Residence Card.

**(3) Aysha (IA/28622/2013), Umama (IA/28625/2013) & Bushra (IA/28626/2013)**

*Legal Background*

7. These three appeals fall to be considered within the context of the Immigration (European Economic Area) Regulations 2006 (SI 1003/2006) ("2006 EEA Regulations"). An EEA national is defined in the Regulations as a person who is a national of an EEA State and who is not also a British Citizen. By regulation 7 of the

2006 EEA Regulations the spouse and direct descendants under the age of 21 of an EEA national are treated as 'family members' of that EEA national, as are direct descendants of an EEA national of any age as long as they are dependent on such person.

8. A dependency under regulation 7 can be a dependency of choice. For such a dependency to arise it is not necessary that a person be wholly or even mainly dependent. If a person requires material support for their essential living needs, that is sufficient (See **Lim (EEA - dependency)** [2013] UKUT 00437 and **Reyes v Migrationsverket** Case C-423/12 ECJ - 16 January 2014).
9. Broadly speaking an EEA national is entitled to reside in the United Kingdom for as long as he or she is a 'qualified person'. A qualified person is defined in regulation 6 of the 2006 EEA Regulations and includes 'a worker' and a person who is 'self employed'. A 'family member' of an EEA national qualified person is entitled to reside in the United Kingdom for as long as the EEA national remains a qualified person, or if the EEA national has permanent residence here.
10. By Regulation 15(1) of the 2006 EEA Regulations a family member of an EEA national who is not himself or herself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with the Regulations for a continuous period of five years "shall acquire the right to reside in the United Kingdom permanently". The Secretary of State must issue such a person a document certifying permanent residence and a Permanent Residence Card - save in circumstances which are not relevant in the instant appeal.

*Matters not in dispute*

11. The following matters of fact have either never been, or are no longer, in dispute:
  - (i) The claimants' father ("the sponsor") is a national of Germany;
  - (ii) He has been a qualified person in the United Kingdom since (at the latest) December 2007 and probably since December 2006;
  - (iii) The claimants entered the United Kingdom on 30 November 2007;
  - (iv) The claimants were each issued with an EEA Residence Card as the family member of an EEA national on 24 June 2008, such cards expiring on 24 June 2013;
  - (v) The claimants' dates of birth are:  
  
Aysha - 11 August 1987  
  
Umama - 14 August 1989, and  
  
Bushra - 18 June 1991.

*Decision on Error of Law*

12. Mr Pipe accepted that the First-tier Tribunal's determination contains an error of law in relation each of these three claimants and that it ought to be set aside. I agree that this is so.
13. The core of the First-tier Tribunal's reasoning for allowing the appeals is found in paragraph 10 of its determination, which reads:

“Under Regulation 7, family members include a spouse, and direct descendants of the EEA national, who are under 21, or dependents of the EEA national or of his spouse. This raises an issue relating to Ayesha, Umama, Bushra and Abdul. All were granted residence permits when they were under 21, but they are now over 21. The issue of their age was not raised by the Respondent. The Appellants representative submitted first that as it was not raised by the Respondent, it was too late for the issue to be raised at the hearing. I disagree: as the Respondent cannot confer on herself the right to issue documents which has no basis in law. However, he also submitted that these four appellants had been admitted lawfully to the UK on the basis of his or her EEA rights, it would be arbitrary to deprive them of those rights just because they had reached a certain age. I agree. I consider that as they were family members under 21 when they entered the UK, that entitles them (if the other requirements of the 2006 Regulations are satisfied) to Permanent Residence cards”

14. It is clear that the judge misdirected himself in law in this paragraph of the determination. It is not sufficient for a person seeking a Permanent Residence Card for that person to demonstrate only that he or she was a family member under 21 upon entry into the United Kingdom. Such a person would have remained in the United Kingdom in accordance with the 2006 EEA Regulations until their 21<sup>st</sup> birthday, but not necessarily after that date. There is nothing arbitrary about this and even if there were, this fact alone would not entitle such person to a Permanent Residence Card. The First-tier Tribunal failed to properly direct itself and apply the terms of the 2006 EEA Regulations. Although Mr Pipe initially sought to defend the First-tier Tribunal's on the basis that its conclusions had a sound basis in EEA community law (a submission I make no finding on) this is not how the First-tier Tribunal dealt with the issue and consequently its conclusions were inadequately reasoned.
15. The determination of the First-tier Tribunal is therefore set aside. As the hearing of the 11 November I directed that I would re-make the decisions under appeal for myself, with the conclusion of the First-tier Tribunal that the sponsor has been a qualified person since at the latest December 2007, being saved.

*Re-making of decisions on appeal*

16. I heard oral evidence from Ayesha, Umama and Bushra, each of whom Mr Smart carefully cross-examined. During the course of his closing submissions Mr Smart accepted that no issues of credibility arose from the evidence given. Having heard the evidence for myself, and considered it in the round with all of the other evidence

before me, I am prepared to accept that each of the three claimants has told the truth to the Tribunal.

### Ayesha

17. Ayesha turned 21 years old on the 11 August 2008. There is no dispute that she was a family member of her sponsor father between the date of her arrival in the UK i.e. 30 November 2007, and the date she turned 21 years old. For the purposes of regulation 15(1) of the 2006 EEA Regulations, she need also demonstrate that she remained dependent on her father in the United Kingdom continuously from 11 August 2008 until December 2012. If she does so she would have accrued the required five year period as the family member of an EEA national residing in the United Kingdom and thus would be entitled to a Permanent Residence Card.
18. Ayesha lived with her father for the entire period between August 2008 and December 2012. Her accepted evidence is that during this period her father at all times paid for the cost of her accommodation, the utility bills and for a majority of the costs of the households groceries. She herself occasionally bought groceries and decorations for the house, but this was on an ad hoc basis. She and her siblings share the use of a car, which was purchased for them by their father. Her father generally pays for the running costs of the car, although her brother sometimes paid for the costs of petrol. Ayesha stated that she first started in employment in June or July 2013, with a company called D-Star fashion.
19. On the basis of the above evidence I accept that Ayesha was entirely dependent on her father between August 2008 and December 2012. During that period she was not in employment and lived with her father. It was her father who funded all of her essential living needs at that time as, indeed, he still does - albeit it appears she is now a dependent of choice and not necessity.
20. Ayesha has therefore accrued a continuous period of five years residence as the family member of an EEA national qualified person and she has, as a consequence, acquired permanent residence in the United Kingdom and is entitled to an EEA Permanent Residence Card.

### Umama

21. Umama turned 21 years of age on 14 August 2010 and therefore was a family member of her sponsor father from the date of her arrival on 30 November 2007 until such date. She is required to further demonstrate, for the purposes of regulation 15(1) of the 2006 EEA Regulations, that she remained continuously dependent upon her father in the United Kingdom from 14 August 2010 until December 2012. I accept that she has demonstrated such.
22. There is no dispute that Umama lived continuously with her father between 14 August 2010 and December 2012. Her accepted evidence is that during this period her father at all times paid for the cost of the accommodation, the utility bills and for a majority of the costs of the household groceries. Like her siblings, she occasionally

bought groceries for the house, but this was on an ad hoc basis. She and her siblings share the use of a car, which was purchased for them by their father. Her father generally paid for the running costs of the car.

23. Umama stated that she began working for Melton Moblezz (her father's business) in 2011, earning £120 per week. She spent the monies she earned from this employment on her social life and shopping (clothes etc) for herself. She began work for D-Star fashion in October 2013.
24. On the basis of this evidence I accept on the balance of probabilities that Umama was dependent upon her father for her essential living needs between 14 August 2010 and December 2012. Although she earned a small sum of money for part of this period, she did not spend it on her essential living needs. Even if I am wrong in this and the purchasing of clothes can be said to amount to her spending her income to meet some of her essential living needs, it is still the case that she received material support from her father to meet those needs. On any view therefore she was dependent on her father during the relevant period and I find this to be so.
25. Umama has therefore accrued a continuous period of five years residence as the family member of an EEA national qualified person and she has, as a consequence, acquired permanent residence in the United Kingdom and is entitled to an EEA Permanent Residence Card.

#### Bushra

26. Bushra turned 21 years of age on 21 June 2012 and was, therefore, a family member of her sponsor father during the period from the date of her arrival in the United Kingdom on 30 November 2007 until 21 June 2012. As a consequence, in order to meet the requirements of regulation 15(1) of the 2006 EEA Regulations, she is required to demonstrate that she remained dependent on her father in the United Kingdom continuously between 21 June 2012 and December 2012.
27. There is no dispute that Bushra lived with her father during the aforementioned period. As with her siblings, her father at all times paid for the cost of the accommodation, the utility bills and for a majority of the costs of the household groceries. Bushra occasionally bought groceries for the household.
28. She worked for Melton Moblezz (her father's business) in 2011 and 2012, earning £100 per week and in March 2012 she began a course of studies, whilst also remaining employed. She spent her income on 'going out with friends'.
29. On the basis of this evidence I accept on the balance of probabilities that Bushra was dependent on her father for her essential living needs between June 2012 and December 2012. Although she was in employment during that time, she did not spend her income on her essential living needs.
30. Bushra has therefore accrued a continuous period of five years residence as the family member of an EEA national qualified person and she has, as a consequence,

acquired permanent residence in the United Kingdom and is entitled to an EEA Permanent Residence Card

### **Decision**

The grants of permission to appeal to the Upper Tribunal in relation to (1) Abida Ejaz and (2) Muhammad Asad Ullah Khan are a nullity and the determination of the First-tier Tribunal in relation to these claimants stands.

Consent is given for the Secretary of State to withdraw her case in the appeal brought in relation to Abdul Rehman Ejaz. In such circumstances the decision of the First-tier Tribunal made in relation to this claimant also stands.

The determination of the First-tier Tribunal in relation to (1) Ayesha Ejaz Khan, (2) Umama Ejaz and (3) Bushra Ejaz contains an error of law capable of affecting the outcome of the appeal and is set aside. Upon re-making the decision in relation to these three claimants I allow each of their appeals for the reasons set out above.

Signed:

A handwritten signature in black ink, appearing to be 'M. O'Connor', written over a horizontal line.

Upper Tribunal Judge O'Connor

Date: 25 November 2014