



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

Appeal Number: IA/44091/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 August 2015**

**Decision and Reasons  
Promulgated  
On 14 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE PITT  
UPPER TRIBUNAL JUDGE MARKUS QC**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MD MANZURUL KADIR**

Respondent

**Representation:**

For the Respondent: Ms E. Savage, Home Office Presenting Officer  
For the Appellant: Mr B. Halligan, Counsel

**DETERMINATION AND REASONS**

1. The respondent is a national of Bangladesh. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 20 October 2014 refusing to issue a residence card as confirmation of a right of residence as an extended family member of an EEA national under Regulation 8(1) and (2) of the Immigration (EEA) Regulations 2006. The First-tier Tribunal allowed the appeal.
2. The relevant provisions of regulation 8 are:  

“(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;

... 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.”

3. The Secretary of State appeals on the grounds that the evidence was not capable of satisfying the requirements of regulation 8(2)(a) prior to joining the EEA national in the UK.
4. For the purpose of this appeal there is no challenge to the First-tier Tribunal’s findings of fact. I set them out in summary. The EEA national on whom the respondent claimed to be dependent is his cousin, Mr Hoque. The respondent’s and Mr Hoque’s families had lived together in a joint family unit in Bangladesh. The respondent had been financially dependent upon Mr Hoque from 2002 to date. Mr Hoque went to Portugal in 2005. He continued to send money to Bangladesh to maintain the extended family. Mr Hoque gained Portugese nationality in 2011. The same year he returned to Bangladesh to set up in business. In May 2014 Mr Hoque came to work in the UK.
5. In the meantime, the respondent had left Bangladesh to come to the UK, lawfully, in 2008. After that he was granted a student visa. While he was a student in the UK, Mr Hoque had maintained him. The respondent travelled to Bangladesh for a few weeks in 2009 for a wedding. He returned again in 2012 and 2013, once for Mr Hoque’s wedding and once for the wedding of Mr Hoque’s brother, for around one month on each occasion. During those visits, he lived at the same address as Mr Hoque. While he was in Bangladesh for those two visits he was maintained by Mr Hoque and was dependent upon him.
6. The Tribunal Judge concluded that the respondent was financially dependent on Mr Hoque while they were living in Bangladesh in the same household from 2011 onwards, and that since 2014 he has lived in the same household as and is financially dependent on Mr Hoque in the UK.
7. The issues which the First-tier Tribunal had to determine under regulation 8(2) was whether, prior to joining Mr Hoque’s household in the UK in 2014, he had satisfied the conditions in regulation 8(1) (a), ie that he had resided in Bangladesh and during that time had been dependent upon Mr Hoque or a member of his household. Those conditions must have been satisfied while Mr Hoque was a Union citizen. That is clear from the wording of Article 3(2) of Directive 2004/38/EC, to which the 2006 regulations give effect. In this case, that means that the conditions in regulation 8(1)(a) had to be satisfied on or after 2011.
8. The respondent was not resident in Bangladesh on or after 2011. On the Judge’s findings, he went there for two relatively short visits to attend weddings. That does not amount to residence. Therefore the conditions in regulation 8(1)(a) could not have been satisfied at any time after Mr Hoque became a Union citizen.
9. For the above reasons, the First-tier Tribunal erred in law and the decision must be set aside. On the evidence, and the First-tier Tribunal’s findings of fact, there can be only one outcome which is that the respondent was not an extended family member within regulation 8 of the EEA Regulations. Accordingly we re-make the decision and refuse the appeal against the decision of the Secretary of State.

Signed:  
Upper Tribunal Judge Kate Markus QC

Date 7 August 2015