



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

Appeal Number: OA/02657/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 2<sup>nd</sup> December 2014**

**Decision and Reasons  
Promulgated  
On 14<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**THE ENTRY CLEARANCE OFFICER - ISLAMABAD**

Appellant

**and**

**MISS CHAMMAN BATOOL  
(ANONYMITY NOT DIRECTED)**

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer  
For the Respondent: Mr Q Iqbal, Solicitor.

**DECISION AND REASONS**

*Introduction*

1. The respondent is a citizen of Pakistan who was born on the 21<sup>st</sup> February 1992. The Entry Clearance Officer (ECO) appeals against the decision of First-tier Tribunal Judge Dearden, promulgated on the 1<sup>st</sup> September 2014, to allow the respondent's appeal against the refusal to issue her with a

European Economic Area (EEA) Residence Permit in order that she may reside with her father, Mr Shafqat Ali (hereafter, “the sponsor”) in the United Kingdom.

2. The sponsor is a Belgian national who, the appellant accepts, was exercising his EEA treaty rights in the United Kingdom at the material time.

*Background to the appeal*

3. The respondent had applied for a Residence Permit alongside her younger siblings, Ali Raza and Alifa Batool, both of whom were under the age of 21 years at the date of the decision.

4. The material part of the ECO’s decision reads as follows –

You state that you wish to join your father who is residing in the UK as a Belgian national. As you are over 21, in order to qualify as a family member you are required to be dependent on the EEA national. You state that you are financially reliant on your sponsor, and spend around 4000PKR per month on living costs. You have not submitted any documents to demonstrate any kind of financial dependence on your father, or where you receive 4000PKR per month from. You have also not provided any financial circumstances. Furthermore, your mother states in her application that she only has one dependent child, your younger sister. This suggests that you are not dependent on your mother. Given that you have failed to demonstrate a financial dependency on your sponsor, I am not satisfied that you are dependent as claimed. I am therefore not satisfied that you are a family member in accordance with Regulation 7 of the Immigration (European Economic Area Regulations) 2006.

5. In allowing the appeal, Judge Dearden accepted the sponsor’s explanation that the respondent’s mother had made “a simple error” in stating that she had only one dependent daughter, and that she had in fact two dependent daughters and one dependent son [paragraphs 16 and 17].

6. The core of Judge Dearden’s reasoning concerning the issue of the respondent’s financial dependency, and that which the ECO argues is fundamentally flawed, is to be found at paragraph 19 of his determination:

I conclude that since 1995 or 1996 Mr Shafqat Ali has been working out of Pakistan. It must follow [that] because Ali Raza and Afifa Batool have been granted entry clearance that the Entry Clearance Officer was satisfied that he had been exercising treaty rights and been sending remittances to Pakistan to maintain his family. Whilst the refusal letter complains that there is little documentation to support the contention that Mr Shaafqat Ali has been sending remittances to his family, the very fact that entry clearance has been granted to Ali Raza and Afifa Batool persuades me that they have been maintained by remittances from their father. [Emphasis added]

7. Having accepted that for the above reasons the sponsor had been financially maintaining his wife and two younger children in Pakistan,

Judge Dearden when on to find that it was “inconceivable” that he had not also been financially maintaining the respondent.

*Error of law*

8. Mr Iqbal accepted that Judge Dearden’s reasoning was illogical. Although the definition of a ‘family member’ of an EEA national encompasses all ‘direct descendents’, it is only necessary for such a person to prove that he is either under the age of 21 years or the EEA national’s dependent [Regulation 7(1)(b)]. It did not therefore “follow” from the granting of a Residence Permit to the respondent’s younger siblings that the ECO had necessarily accepted that they were financially dependent upon their father. On the contrary, this is a *non sequitur*. All that the granting of entry clearance to the respondent’s younger siblings in fact demonstrated was that the ECO had accepted that they were the sponsor’s direct descendants and that they were under the age of 21. The ECO’s decision in their cases was thus entirely immaterial to the issue that confronted the judge in relation to the instant appeal; namely, whether the respondent had proved - as a direct descendant who was over the age of 21 years - that *she* was financially dependent upon the sponsor at the date of the Immigration Decision. As this flawed reasoning formed the bedrock of the judge’s decision to allow the appeal, it follows that that it cannot stand and must be set aside.

*Re-making of the decision*

9. Whilst the sponsor has submitted documentary proof of his remittances to Pakistan since the date of the decision, which might reasonably be construed as being for the benefit of the respondent, he has not submitted any such proof in support of his claim that he made such remittances prior to the date of the decision. There is thus no documentary proof that the sponsor was supporting any member of his family (not just the respondent) prior to the date of the decision. Although the documentary proof of remittances made since the date of the decision may be used to support a fresh application for entry clearance, I am not satisfied that it casts any light at all upon the circumstances that were appertaining either at or prior to the date of the Immigration Decision. I am therefore satisfied that the decision to refuse entry clearance is in accordance with immigration rules, and that the appeal against it must accordingly be dismissed.

Notice of Decision

10. The Entry Clearance Officer’s appeal is allowed.
11. The decision of the First-tier Tribunal to allow the appeal against the Entry Clearance Officer’s decision is set aside and substituted by a decision to dismiss that appeal.

Anonymity is not ordered

Signed

Date 13/01/2015

Judge  
Deputy Judge of the Upper Tribunal