



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

**Appeal Number: EA/04020/2015
EA/04021/2015
EA/04022/2015
EA/04023/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 29th January 2019**

**Determination & Reasons Promulgated
On 1st February 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**AHTASHAM AZHAR
SADAF AHTASHAM
MT
FA**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Azhar in person and for all appellants
For the Respondent: Ms K Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants sought a residence card as extended family members, dependent upon an EU national. Their applications were refused for reasons set out in decisions, served individually, dated 10th December 2015.
2. Their applications were considered under regulation 8 of the 2006 Regulations and they exercised their right of appeal under regulation 26.

3. Mr Azhar is the cousin and brother in law of Waqas Naeem, a Pakistani national who is married to Claudia Fernandez who is a Spanish National exercising Treaty Rights in the UK. Sadaf Ahtasham is his wife and is Waqas Naeem's sister; the other two appellants are their children.
4. Ms Fernandez has been exercising Treaty Rights in the UK since November 2009. Her marriage to Waqas Naeem took place in April 2014.
5. Mr Azhar has been supported by Mr Naeem and lived, with his wife, as part of Mr Naeem's family household in Pakistan and was supported by Mr Naeem. Mr Naeem came to the UK in February 2011. Mr Azhar and his family remained in the family home in Pakistan, supported by Mr Naeem. Mr Azhar came to the UK as a student in November 2011 – financially supported by his cousin/brother in law. They lived in the same house in the UK for two months and then he moved to other accommodation paid for by Mr Naeem. The other appellants arrived in the UK in September 2012. Mr Naeem continued to support the family financially although they did not live in the same household in the UK.
6. The appellants assert they continue to be supported by Mr Naeem and Ms Fernandez. This is not accepted by the respondent.
7. The application for residence cards was refused by the respondent on the grounds:
 - He had entered the UK in 2011 and his family in 2012 and prior to 2014 there was no relationship between them and Ms Fernandez, prior to their residence in the UK;
 - The financial evidence provided by the appellants to the respondent had not shown that Ms Fernandez had the finances to be able to support them as claimed;
 - The appellants do not live as part of the EEA household in the UK;
 - There is nothing to suggest that the EU national would be deterred from exercising Treaty Rights if the appellants were returned to Pakistan;
 - There was insufficient evidence that the appellants were dependant on the EU sponsor either at the date of the decision or prior to entering the UK.
8. The appeal was eventually heard before First-tier Tribunal Judge Parkes and dismissed for reasons set out in a decision promulgated on 26th June 2018.
9. The appellants sought permission to appeal on the grounds that
 - The First-tier Tribunal judge had failed to have regard to the detailed grounds of appeal submitted dated 28th May 2018;

- That a relevant EEA national includes the spouse of an EEA national and thus the respondent was incorrect in law to find that the appellants could not meet the requirement of being extended family members; the judge failed to make a finding regarding this;
 - That there was adequate evidence before the First-tier Tribunal judge of the appellants' dependency on Mr Naeem when he lived in Pakistan in the same household as them, when he left to come to the UK, when the first appellant came to the UK and since the whole family has arrived in the UK;
 - That the financial and emotional dependency of the appellants is with Mr Naeem and Ms Fernandez and the First-tier Tribunal judge failed to make a finding on that submission;
 - That regulation 8 requires dependency on either the EEA National or the spouse; because the appellants were dependent on Mr Naeem prior to his marriage that is sufficient dependency to bring them within regulation 8; the judge failed to address this submission.
10. Deputy Upper Tribunal Judge Alis granted permission on all grounds but drew attention to the arguable failure that the First-tier Tribunal judge failed to deal with the last ground of appeal and that given *Rahman C-83/11* did not consider EFMs and dependency of those in the UK seeking leave to remain, the judge ought arguably to have considered the submission.
11. It is correct that the First-tier Tribunal judge failed to consider and reach a decision on all of the grounds submitted before him. In paragraph 7 of his decision the judge said

“.... for these purposes I assume the Appellants were dependant on Waqas Naeem when they lived in Pakistan until 2011 and that they continued to be so on arrival although this is not to be taken as a finding of fact. This assumption is made for the purposes of this decision only. Their dependency is disputed by the Home Office but for the reasons given below it is not necessary to decide any of the contentious points raised.”

The judge goes on to say:

9. the First Appellant seeks to argue that his dependence on his brother in law/cousin when in Pakistan is sufficient even though at the time there was no EEA element as Waqas Naeem did not marry his spouse until 3 years after the Appellants came to the UK. he argues that his dependency on his brother in law/cousin is sufficient as his brother in law/cousin is now a family member of an EEA national and that means that he meets the terms of regulation 8.

10. At the time of dependency before coming to the UK the Appellant's brother in law cousin needs to already be the family member of an EEA national. When the Appellants arrived in the UK there was no EEA family involved and so were never going to be able to meet the requirements of regulation 8. The subsequent marriage...some years later did not have the effect of retrospectively engaging the terms of the EEA Regulations. It was only if the Appellants could show *after* the marriage ...that they were dependent outside the UK and then in the UK that they could succeed,

having left Pakistan before the EEA national married into the family they could never meet the EEA regulations.

12. The First-tier Tribunal judge does refer to the other grounds raised but it is correct that he fails to reach a decision on those grounds. Whether such a lack of decision amounts to an error in law is dependant upon the outcome of the appellants' submission that dependency in Pakistan prior to Mr Naeem's marriage is sufficient to bring them within the definition in regulation 8 of the 2006 Regulations.

13. Regulation 8 reads, in so far as is relevant, as follows:

8.— "Extended family member"

(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 in which the EEA national also resides 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.

(3) ...

(4) ...

(5) ...

(6) In these Regulations "relevant EEA national" means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2) ...

14. *Dauhoo (EEA Regulations – reg 8(2))* [2012] UKUT 79 (IAC) considered the scheme in regulation 8(2) of the 2006 regulations and concluded the four ways in which a person can succeed in establishing that he or she is an 'extended family member'. The headnote summarises the four ways as follows:

(i) prior dependency and present dependency;

(ii) prior membership of a household and present membership of a household;

(iii) prior dependency and present membership of a household;

(iv) prior membership of a household and present dependency.

It is not necessary, therefore, to show prior and present connection in the same capacity: i.e. dependency- dependency or household membership-household membership ((i) or (ii) above). A person may also qualify if able to show (iii) or (iv).

15. The appellants' submitted detailed written submissions which were very ably amplified by Mr Azhar in his oral submissions. He referred in detail to the legislative and jurisprudential framework relied upon. The underlying submission is that they fall within either (i) or (iv) – they lived in the same

household as Mr Naeem in Pakistan prior to him coming to the UK and are now dependent or alternatively, they were dependent on Mr Naeem while they were in Pakistan and, on coming to the UK, they remain dependent. As the spouse of an EU national exercising Treaty rights, the fact that the dependency arose prior to and continued after Mr Naeem's marriage was the critical factor rather than the fact that the marriage took place after the appellants had arrived in the UK.

16. It is not in dispute that when the appellants were in Pakistan, Mr Naeem was not the spouse of an EU national exercising Treaty Rights. Nor is it in dispute that when Mr Naeem married, the appellants were already in the UK. Nor is it in dispute that they are related to Mr Naeem and, through Mr Naeem's marriage, to an EU national.
17. *Rahman* C-83/11 confirmed the obligation on States to facilitate in accordance with national legislation, the right of entry and residence for any other family members who are dependants of a Union Citizen. It is within that context that the four criteria for establishing dependency are to be viewed.
18. Regulation 8 is satisfied if an applicant is a relative of an EU national (which these appellants are) and fulfils the other criteria in 8(2). The operative part of 8(2) for these appellants is 8(2)(c). The appellants are living in the same country as the EU national and they are dependent (for the purpose of this appeal) upon the EU national and Mr Naeem. But 8(2)(c) refers to "continues" to be dependant. As [9] of *Dauhoo* states,

"...it remains that in order to qualify as an extended family member/other family member under reg 8(2) a person who is in the UK must show that he meets the requirements of both reg 8(2)(a) and (c). He has to show a relevant connection with the EEA principal both (a) prior to coming to the UK (the essence of reg 8(2)(a)) (the "prior" test); and (b) now he is here in the UK (the essence of reg 8(2)(c)) (the "present" test).
19. The connection with the EEA principal did not occur for these appellants until after they had arrived in the UK. They were not dependent upon the EEA principal or the spouse of an EEA national and nor were they living in the household of an EEA national or the spouse of an EEA national prior to coming to the UK. That they are now dependant (which is taken to be the position for the purposes of this appeal) is insufficient. This is further confirmed, as stated in *Dauhoo* [12] where Article 3 provides that the Directive applies to family members who move to or reside in a Member State and the family member accompanies or joins them. These appellants have not joined the EEA national; they have become family members after having resided in the UK prior to becoming family members.
20. It follows that the appellants are not extended family members of Mr Naeem and his EU wife.

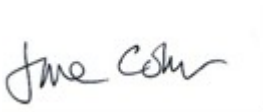
21. The conclusion drawn by the First-tier Tribunal is correct and there is no error of law such that the decision should be set aside to be remade.
22. It also follows that even though findings were not made on the other grounds of appeal relied upon by the appellants, those grounds were only of relevance if the appellants were extended family members. There is no error of law by the First-tier Tribunal judge in failing to reach conclusions on those grounds.
23. Mr Azhar submitted that the Tribunal should have reached a conclusion on an Article 8 human rights claim which had been made in the covering letter. As I explained to him, in the absence of a claim made in accordance with the Rules, there is no jurisdiction to hear an Article 8 ground of appeal – see *Amirteymour* [2017] EWCA Civ 353.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal stands.

Date 30th January 2019



Upper Tribunal Judge Coker