



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

Appeal Numbers: EA/09316/2017  
EA/09317/2017  
EA/09318/2017  
& EA/09319/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 October 2018**

**Decision & Reasons  
Promulgated  
On 7 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**MUHAMMAD [H]  
ZAHRA [H]  
[M Z K]  
[M A K]**

(anonymity direction not made)

First Appellant  
Second Appellant  
Third Appellant  
Fourth Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Iqbal, Counsel instructed by ATM Law Solicitors  
For the Respondent: Mr P Duffy

**DECISION AND REASONS**

1. This is an appeal against the decision of the First-tier Tribunal dismissing, for want of jurisdiction, an appeal against the decision of the Secretary of State to refuse the appellants' Residence Cards as extended family members of an EEA national.
2. The appellants are all citizens of Pakistan. The first appellant was born in 1973. The second appellant is his wife. She was born in 1986. The third and fourth appellants are their minor children. They were born in 2008 and 2013 respectively.
3. I begin by considering carefully the Secretary of State's decision. It acknowledges that the Secretary of State was dealing with the decision refusing the applicants' Residence Cards as extended family members of an EEA national.
4. Essentially it is the appellants' case that the first appellant is the paternal first cousin of one Wagar Ali Syed who is an EEA national exercising treaty rights in the United Kingdom and the appellants lived together with Mr Syed in his household in Germany between the years 2000 and 2003 and were dependent upon him financially while he was in Germany. They continue to be a member of his household in the United Kingdom and continue to be dependent on him.
5. According to the refusal letter dated 17 February 2017 the respondent did not accept that the appellants were members of the extended family of the EEA national. In particular the birth certificates were unsatisfactory because they did not purport to identify the sponsor's mother who was said to be the cousin of the appellants. Further, the respondent was dissatisfied with the evidence of financial dependency. The respondent said the evidence did not go beyond evidence of financial support which is rather less than dependency and it did not show that the appellants were indeed the tenants of the home they claimed to share with their sponsor. As I understand the respondent's letter it criticises the adequacy rather than the honesty of the evidence relied upon. However, it asserts emphatically that "you have no right of appeal against this decision" and states in the penultimate paragraph that the application has been "assessed on the basis of the Immigration (European Economic Area) Regulations 2006."
6. The First-tier Tribunal Judge was not satisfied that there was a right of appeal and asked for representations. The judge considered not the 2006 Regulations on which the Secretary of State purported to make the decision but the 2016 Regulations. It is clear from Regulation 2 (general interpretation) of the Immigration (European Economic Area) Regulations 2016 that an EEA decision does not include the "issue of an EEA family permit to an extended family member".
7. The grounds of appeal to the Upper Tribunal (not drawn by Ms Iqbal) rather missed the point. They say, wrongly, that the judge applied the 2006 Regulations but that is based on a misreading of paragraphs 27 and 28 of the judge's decision where the judge was analysing the Secretary of

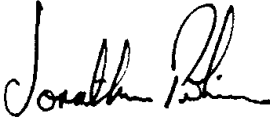
State's reasons. The important thing is not when the application was made but when it was decided and it was decided on 17 March 2017 when the 2016 Regulations were clearly in force. The grounds then go on to say that there has to be an appealable decision because that it is the effect of the decision of the Court of Justice of European Union in **SSHD v Banger [2017] UKUT 125**. In fact the decision in **Banger**, as the grounds recognise, had not then been given but the Advocate General's opinion was available.

8. It is quite clear that this in fact is a decision under the 2016 Regulations and there is no right of appeal. It follows therefore that the First-tier Tribunal Judge was right to say there was no jurisdiction, even if the reasoning might have got a little warped at some point. Any error is wholly immaterial.
9. In fact, the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019 do provide for a right of appeal in these circumstances and I think that the appellants could make a fresh application better prepared and have a right of appeal in the event of it being refused, but that is only a view and my decision does not depend on it. However, it is something about which they want to get proper advice.

**Notice of Decision**

In the circumstances the judge's findings on the merits of the claim are irrelevant and I dismiss these appeals against the First-tier Tribunal's decision.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



---

Dated 1 May 2019