



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

Appeal Numbers: EA/00742/2019 (V)
EA/00744/2019 (V)
EA/00745/2019 (V)

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 22 October 2020**

Decision & Reasons Promulgated

On 2 November 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**SAJIDA JABEEN
SUNDAS KHALID
MADIHA KHALID**

Appellants

and

ENTRY CLEARANCE OFFICER -SHEFFIELD

Respondent

Representation:

For the Appellants: Ms E Rutherford, instructed by Syeds Law Office, Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan who were born on 24 January 1960, 29 January 1993 and 16 March 1989 respectively. The first appellant ("A1") is the mother of the second and third appellants ("A2" and "A3").

2. On 28 October 2018, the appellants each applied for an EEA family permit under reg 12 of the Immigration (EEA) Regulations 2016 (SI 2016/1052 as amended) (“the EEA Regulations”).
3. A1 applied on the basis that she was a “family member” of Judith Kovacs, a Hungarian citizen (an EEA national) exercising Treaty rights in the UK (the “sponsor”) who is married to A1’s son. As such A1 claimed she was a “dependent” direct relative in the ascending line of an EEA national’s spouse (reg 7(1)(c)). A2 and A3 applied on the basis that they were “extended family members” (“EFMs”) as dependent relatives (sisters-in-law) of the sponsor, an EEA national (reg 8(2)).
4. On 19 December 2018, the ECO refused each of the appellants’ applications. Principally, he was not satisfied that the sponsor was a “qualified person”. He was not satisfied that she was working or self-employed in the UK. Further, the ECO was not satisfied that the sponsor (and, so far as relevant, A1’s son) were financially supporting the appellants and, therefore, they were dependent upon the sponsor as required by regs 7(1)(c) and 8(2) of the EEA Regulations.
5. The appellants appealed to the First-tier Tribunal. The appeal was heard by Judge Sharma on 14 October 2019. In the course of that hearing, the judge considered the documentary evidence and also the evidence of the sponsor who gave oral evidence at the hearing.
6. The only live issue before the judge was whether the appellants could establish their dependency upon the sponsor (and A1’s son). Before the judge, the Presenting Officer accepted that that was the only issue arising under the EEA Regulations. Accordingly, it was accepted that the sponsor was a “qualified person” for the purposes of the EEA Regulations.
7. The judge was not satisfied that the appellants were dependent upon the sponsor. Although he accepted that the sponsor (and A1’s son) had made financial payments to the appellants since 8 November 2017 (although he did not accept the evidence that payments had been made earlier), nevertheless the judge was not satisfied on the evidence that these payments were to meet the “essential needs” of the appellants and consequently he was not satisfied they were dependent upon the sponsor and he dismissed their appeals.
8. The appellants were granted permission to appeal to the Upper Tribunal by the First-tier Tribunal (Judge R J Pooler) on 10 February 2020.
9. The error of law hearing was listed before me at Cardiff Civil Justice Centre on 6 August 2020 and, following a remote hearing, in a determination sent on 4 September 2020 I concluded that the First-tier Tribunal’s decision involved the making of an error of law and I set that decision aside.
10. The appeal, with the agreement of the parties, was adjourned to be relisted before me in order to remake the decision on the single issue in dispute, namely whether the payments made by the sponsor to the appellants were in order to meet their “basic”

or “essential” needs following Lim v Entry Clearance Officer, Manila [2015] EWCA Civ 1383 and so established the required dependency under reg 7(1)(c) (for A1) and reg 8(2) (for A2 and A3) of the EEA Regulations.

11. The resumed hearing was again listed before me at the Cardiff Civil Justice Centre on 22 October 2020. The appeal was heard remotely with Ms Rutherford, who represented the appellants and Mr Howells, who represented the ECO taking part in the hearing remotely by Skype for Business.
12. The appellants relied upon new evidence contained in a supplementary bundle which Mr Howells accepted should be remitted under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2689 as amended). That bundle contained a detailed witness statement from Mr Khurram Shehzad who is A1's son and the brother of A2 and A3. In addition, there were affidavits from each of the appellants dated and signed 16 October 2020. Also included in the bundle were copies of Halifax bank statements from the sponsor covering the period 1 June to 27 July 2020 and a Barclay's bank statement in respect of the sponsor and Mr Shehzad covering the period 1 August 2019 to 23 September 2020.
13. In addition, Mr Shehzad briefly gave oral evidence in which he adopted his witness statement. He confirmed that he and his wife sent money to the appellants. Prior to 2016, they had been sent through a person in Birmingham in cash. Since 2016-2017, the money had been sent through bank accounts. Mr Howells took Mr Shehzad to the bank statements relating to his wife's account and their joint account and Mr Shehzad confirmed transactions on those accounts were payments made to the appellants (into A1's bank account) as a result of transfer through a third party transfer organisations. He explained that the sums were greater than the £200 per month. He said that was necessary to meet their basic needs because the appellants were living in their grandfather's house and it had been agreed in the family that Mr Shehzad would buy the property from the family so that they could enjoy the proceeds.
14. Having heard Mr Shehzad give evidence and following his cross-examination, Mr Howells conceded on the basis of the new documentary evidence, the appellants' affidavits and the oral evidence he had heard, that the money sent by the sponsor and Mr Shehzad had been to meet the “basic” or “essential” needs of the appellants and that they had, therefore, established that they were dependent upon the sponsor as required by the EEA Regulations. Mr Howells conceded that the appellants' appeals should be allowed.
15. I agree with that concession. The judge accepted that the sponsor had made financial payments to the appellants since 8 November 2017 and, on the basis of the more recent evidence, I accept that those payments have continued and that they are in order to meet the “essential” or “basic” needs of the appellants who plainly have no other sources of income. They have, therefore, established on a balance of probabilities that they are dependent upon the sponsor as required by regs 7(1)(c) and 8(2) of the EEA Regulations.

16. Consequently, as that was the only issue under the EEA Regulations which was in dispute, I am satisfied on a balance of probabilities that A1 is a “family member” of an EEA national’s spouse under reg 7(1)(c) and A2 and A3 are EFMs under reg 8(2) of the EEA Regulations.
17. A1 is a “family member”. It is accepted that the remaining requirement for the issue of a family permit under reg 12(1) are satisfied. A1 is, accordingly, entitled to be issued with a family permit under reg 12(1).
18. A2 and A3 are EFMs and they meet the substantive requirements of reg 12(4). That provision states that an ECO *may* issue an EEA family permit to individuals such as A2 and A3 where it is appropriate to do so. The exercise of that discretion is for the ECO to determine but no matters were raised before me, and Mr Howells did not suggest there were any such matters, that would justify the exercise of discretion so as to refuse to issue A2 and A3 with EEA family permits to come with their mother, A1 to join the sponsor and their brother in the UK.

Decision

19. The decision of the First-tier Tribunal to dismiss each of the appellants’ appeals involved the making of an error of law and the decisions were set aside by my decision sent on 4 September 2020.
20. I now remake the decision in each appeal. The appeals are allowed on the basis set out in paras 17 and 18 above.

Signed

Andrew Grubb

Judge of the Upper Tribunal
26 October 2020

TO THE RESPONDENT FEE AWARD

As I have allowed each of the appeals, and despite there being new evidence relied upon, in all the circumstances I consider it to be appropriate to make a fee award in respect of any fee that has been paid or which the appellants are liable to pay.

Signed

Andrew Grubb

Judge of the Upper Tribunal
26 October 2020