



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

Appeal Number: UI-2021-000903  
[EA/02104/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 August 2022  
*Ex tempore decision***

**Decision & Reasons Promulgated  
On 1 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**ENTRY CLEARANCE OFFICER**

**and**

**TARLOK KAUR WADHWA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr T. Melvin, Senior Home Office Presenting Officer  
For the Respondent: In Person (via CVP)

**DECISION AND REASONS**

1. This is an appeal brought by the Entry Clearance Officer against a decision of First-tier Tribunal Judge T. Lawrence (“the judge”) promulgated on 30 July 2021. The judge allowed an appeal brought by the appellant before the First-tier Tribunal against the refusal of her application for a family permit dated 7 January 2021 was allowed.

*Factual background*

2. The appellant before the First-tier Tribunal, referred to in this decision as the applicant, is a citizen of Afghanistan and was born in June 1950. She applied for an EEA family permit to visit the United Kingdom with her son, Jassi Singh Wadhwa, for a period of just under one month. I will refer to Mr Wadhwa as the

sponsor. He is a citizen of Sweden and, together with the applicant, he lives in Stockholm. The basis of the application for the family permit said the following, under the heading “*Extra information*”:

“I’ll travel with Jassi Singh Wadhwa who have Swedish Passport and I have permanent residence visa of Sweden. We want to stay in UK for 15 days but due to UK gridlines [*sic*] about COVID-19, we’ll self-isolate for two weeks and after that 15 days we spend time with the family and also join the celebration of Manshpreet’s birthday.”

3. The Entry Clearance Officer refused the application for the following reasons. First, although the application had provided evidence that the sponsor holds a Swedish, passport the Entry Clearance Officer was not satisfied that the sponsor was the applicant’s son. The decision noted that “in the absence of an original birth certificate issued around the time of the birth ... I am not satisfied that you are related to your sponsor as claimed.” Secondly, there was no evidence that the applicant was dependent upon the sponsor.
4. The judge heard the appeal on the papers. In his decision, the judge summarised the reasons for refusal and the case advanced on behalf of the applicant, before outlining the relevant provisions of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”) at paragraph 18.
5. At paragraph 19, the judge commenced his operative analysis, reaching a number of findings of fact which have not been challenged by the Entry Clearance Officer, and which may therefore be summarised in brief terms. The judge accepted that the applicant was the daughter of the sponsor. Further, having directed himself as to the relevant legal framework concerning the concept of “dependency” under EU law, the judge concluded that the applicant was dependent for her physical support on the sponsor. That being so, the judge concluded that the applicant was the “family member” of the sponsor and, as such, concluded that the appeal fell to be allowed under the 2016 Regulations.
6. The grounds of appeal contend that by focussing the Tribunal’s analysis on regulation 7 of the 2016 Regulations, the judge omitted to address the criteria in regulation 12. Pursuant to regulation 12, it is necessary for an individual seeking to enjoy a right to reside as a family member of an EEA national to be travelling to the United Kingdom within six months of the date of the application, and to be accompanying or joining their EEA sponsor, who must be residing, or prospectively residing, in accordance with the requirements of the 2016 Regulations.
7. Permission to appeal was granted by Upper Tribunal Judge Frances, who observed:

“It is arguable on the facts asserted by the appellant that she cannot satisfy Regulation 12(a). Having found the appellant satisfied regulation 7, the judge failed to consider regulation 12. The grounds are arguable.”

#### *The law*

8. The relevant provisions of the 2016 Regulations are as follows. Under regulation 7 a family member is defined in these terms:

“(1) In these Regulations, ‘family member’ means, in relation to a person (‘A’)

...

(c) dependent direct relatives in A’s ascending line, or in that of A’s spouse or civil partner.”

Regulation 11 provides, where relevant:

“(1) An EEA national must be admitted to the United Kingdom on arrival if the EEA national produces a valid national identity card or passport issued by an EEA state.”

Regulation 12 provides, where relevant:

“(1) An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and -

(a) the EEA national

...

(ii) will be travelling to the United Kingdom within six months of the date of the application and will be an EEA national residing in accordance with these Regulations on arrival in the United Kingdom ...”

And regulation 13 provides, again where relevant:

“(1) An EEA national is entitled to reside in the United Kingdom for a period not exceeding three months beginning on the date of admission to the United Kingdom provided the EEA national holds a valid national identity card or passport issued by an EEA state.”

### *Discussion*

9. In submissions, Mr Melvin contended that the decision of the judge failed to engage with the criteria contained in Regulation 12(1)(a)(ii); there was no consideration of whether the applicant would be residing with an EEA national in accordance with the Regulations upon arrival in this country. He submitted that, since the sponsor resides in Sweden, it would not have been possible for the application to have succeeded, on any view. I disagree. As I outlined in my summary of the facts earlier, the entire premise of the application advanced by the applicant, of which the judge would have been well aware, was that she would be accompanying her son, on whom she claimed to be dependent, to the United Kingdom. Accordingly, that fulfils the “travelling to the United Kingdom within six months” criterion contained in Regulation 12(1)(a)(ii).
10. Mr Melvin also submitted that there was no evidence that the sponsor would be residing “in accordance with the Regulations” upon the arrival of the applicant and himself in this country, since there was no evidence he would be working, self-employed, self-sufficient, or residing on another basis under the 2016

Regulations. I respectfully disagree. The 2016 Regulations provide that any EEA national enjoys a right of residence for a period of three months before being subject to any qualitative requirements to meet additional residence criteria: see regulation 13(1). The basis of the applicant's application for an EEA family permit was that she wished to accompany the sponsor to the United Kingdom for a period of just under a month. That being so, there was no need for the applicant to demonstrate that the requirements of the Regulations concerning an extended right of residence, that is to say on exceeding the initial three month period, were met. Residence during that period would be "in accordance with the Regulations".

11. Mr Melvin submitted that the decision had failed to address the requirements of regulation 12 and that, accordingly, it failed to address the points raised in the refusal letter. Again, I respectfully disagree. The Secretary of State's decision did not expressly rely on any additional provisions of regulation 12 other than referring to the requirements of it automatically not being met on account of the failure of the applicant to meet regulation 7. So much is clear from the wording of the decision in the final paragraph of the operative analysis, which provides as follows: "I therefore refuse your EEA family permit application because I am not satisfied that you meet all of the requirements of regulation 12 ... of the Immigration (European Economic Area) Regulations 2016."
12. These are adversarial proceedings, and the judge addressed all matters raised in the decision letter. There was no challenge in the grounds of appeal to this tribunal to the judge's decision to proceed on the papers only. Moreover, as I have already set out, there has been no challenge to the judge's findings of fact that the sponsor and the applicant are related and that the applicant is "dependent" upon him for the purposes of the 2016 Regulations. For those reasons, the judge was entitled to reach findings that the criteria in regulation 7 concerning the applicant's status as a "family member of an EEA national" were met and that the requirements for the issue of a family permit were also met.
13. This appeal is dismissed.

### **Notice of Decision**

The decision of Judge Lawrence did not involve the making of an error of law such that it must be set aside.

The appeal is dismissed under the Immigration (European Economic Area) Regulations 2016.

No anonymity direction is made.

Signed Stephen H Smith  
Upper Tribunal Judge Stephen Smith

Date 21 September 2022