



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

Appeal Number: EA/06388/2019

THE IMMIGRATION ACTS

**Heard at Field House
on 08 December 2021**

**Decision & Reasons Promulgated
On 25 March 2022**

Before

**UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE**

Between

ENTRY CLEARANCE OFFICER

Appellant

and

GANGA SUBASHINI WIJERATHNA

Respondent

Representation:

For the appellant: Mr E. Tufan, Senior Home Office Presenting Officer

For the respondent: Ms C. Bayati, instructed by Direct Access (and by video)

DECISION AND REASONS

1. For the sake of continuity we will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State (on behalf of the ECO) is the appellant in the appeal before the Upper Tribunal.
2. The appellant (Ms Wijerathna) appealed the respondent's (ECO) decision dated 29 October 2019 to refuse to issue a family permit as a dependent direct relative in the ascending line of an EEA national (her daughter-in-law).

3. First-tier Tribunal Judge Hawden-Beal ('the judge') allowed the appeal in a decision promulgated on 01 March 2021. The hearing was conducted remotely by Cloud Video Platform. The judge heard from the appellant, her son, and her daughter-in-law. In assessing whether the appellant met the requirement to be dependent upon the EEA sponsor, the judge directed herself to the relevant case law in *Flora May Reyes v Migrationsverket* [2014] EUECJ C-423/12 (16 January 2014) and *Jia v Migrationsverket* [2007] EUECJ C-1/05 (09 January 2007). She noted that the dependency did not need to be of necessity but did need to be real. The judge considered the oral evidence of the witnesses and the documentary evidence of remittances to Sri Lanka. The judge concluded that regular remittances over a period of years were sufficient to show that the appellant was a dependent family member in the ascending line of an EEA national for the purpose of regulation 7 of The Immigration (European Economic Area) Regulations 2016.
4. The respondent applied for permission to appeal to the Upper Tribunal on the following grounds:

'It is respectfully submitted that in allowing the appeal on the basis that the appellant satisfied the conditions required for the issuance of a family permit under the EEA regulations (sic), FTT] Hawden-Beal errs in law. It is clear from a reading of the regulations (sic) that family permits are concerned with the potential residence of a family member with their EEA national relative. The application in the instant case reveals that the appellant does not intend to reside in the UK, [15 and 16]

"She cannot stay in the UK because she has to return to Sri Lanka to care for her husband"

"This EEA permit lasts for 5 years and if she is successful, she can come and go as she pleases."

and simply wishes to circumvent the Immigration Rules relating to visit visas by obtaining a family permit, which would allow her to travel without Immigration compliance on multiple visits to the UK. It is asserted that to allow the appeal when residence is not sought, is to misinterpret the EEA Regulations and further more is to devalue the Immigration Rules which exist to ensure the protection of the public interest in maintaining a fair and just system for all, as such it is respectfully submitted that the determination is wholly in error.'

Decision and reasons

5. The application for a family permit was made in the context of a history of applications for a visit visa that were refused by the ECO. At the hearing, Mr Tufan accepted that the point raised in grounds of appeal to the Upper Tribunal had not been raised in the decision letter nor at any point during the appeal process in the First-tier Tribunal. He also accepted that, contrary to the factual assertion made in the grounds, a family permit was a temporary permit. An applicant would normally be expected to make a further application for a residence card once in the UK if they wanted to remain as the family member of an EEA national.

6. In light of this concession the grounds are wholly without merit. It is not arguable that the judge erred if the point had never been raised. In any event, there is nothing in the issuing of a family permit that would preclude a family member from visiting a relative and then returning home. In effect, a family permit is the equivalent to entry clearance under UK immigration law.
7. Although Mr Tufan raised some informal concerns with respect to the First-tier Tribunal's findings relating to dependency, he did not make a formal application to amend the grounds of appeal.
8. For the reasons given above, we conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

The decision shall stand

Signed M. Canavan Date 22 March 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email