



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: **UI-2022-002002**  
**(EA/07865/2021)**  
**UI-2022-002007 (EA/07837/2021)**  
**UI-2022-002008 (EA/07853/2021)**  
**UI-2022-002009 (EA/07870/2021)**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 11 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Tahira Yasmin**  
**Usama Ejaz**  
**Mah Jabeen**  
**Muhammad Usman**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr M Khan, Solicitor Advocate Parkview Solicitors  
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**Heard Remotely at Manchester Civil Justice Centre on 21 February 2023**

**DECISION AND REASONS**

1. For the purpose of this decision the parties will be referred to as they were before the First-tier Tribunal.
2. This is the respondent's appeal against the decision of the First-tier Tribunal (Judge Williams) promulgated 26.1.22 allowing the appellants' linked appeals against the respondent's decisions. The appellants are the mother, siblings, and a sister-in-law of their sponsor's spouse.
3. The appellants, national of Pakistan, had applied for EEA family permits to join their sponsor in the UK as extended family members (EFMs) of an EEA (Spanish) national, pursuant to regulation 8 of the Immigration (EEA) Regulations 2016, as

amended. In summary, the applications were refused by the Entry Clearance Officer in decisions made between 10.4.21 and 5.2.21, on the basis that the respondent was not satisfied that the appellants met the EFM dependency requirements. The full reasons are set out in the Entry Clearance Officer decision, repeated in the First-tier Tribunal appeal decision, and need not be rehearsed here.

4. For the reasons set out in the impugned decision, the First-tier Tribunal concluded that: financial dependency had been established, the judge being satisfied that money transfers had been satisfactorily evidenced; that the appellants rely on monies from the sponsor to meet their essential needs; and that adequate evidence had been adduced to demonstrate that the sponsor can afford to support the appellants and will continue to be able to do so when they are in the UK. In the circumstances, the four linked appeals were allowed.
5. The respondent was granted permission to appeal by the First-tier Tribunal, the judge considering it arguable that the First-tier Tribunal Judge erred in law by failing to examine all of the circumstances of the appellants and their sponsor and in particular failing to address the issue of adequate accommodation without recourse to public funds. The judge granting permission also considered that the judge arguably failed to take account of the respondent's residual discretion provided for by Regulation 12(4)(c).
6. The grounds as drafted in the application for permission first argue that under Regulation 12(4)(c), an Entry Clearance Officer must be satisfied that "in all the circumstances, it appears to the Entry Clearance Officer appropriate to issue the EEA family permit." The second ground asserts that under Regulation 13(3), a family member "Who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation." It is argued that if the sponsor does not have the means to support the appellants in the UK in addition to those already in her household, it is likely to lead to a further burden on the state. The respondent believed the sponsor to be in receipt of state financial support. That turns out to be not accurate.
7. The respondent had also suggested that the sponsor already lives with her husband, father-in-law, and their four children at their property, and that there may another person resident at the property, the sister-in-law of the sponsor. It is submitted that the First-tier Tribunal Judge failed to adequately resolve this issue and has thereby misdirected himself in law. However, as set out below, the factual premise of the grounds is inaccurate.
8. The two grounds rather overlap and essentially take the issue as to whether the sponsor can afford to financially support and/or accommodate the appellants in the UK. Adequate accommodation was not taken as a specific issue in the refusal decisions.
9. Whilst the right to reside referred to in the grounds relates to a 'family member', Regulation 7(3) provides that an EFM must be treated as a family member, and it would make no sense if an EFM had a right to reside where a 'family member' did not. In any event, the appellants do not challenge this interpretation, or that the respondent was entitled to be satisfied that the appellants would not become an "unreasonable burden" once in the UK.

10. The Presenting Officer, Mr Ogbewe, suggested in submissions that the accommodation was not sufficient for the sponsor's family and the appellants but the judge pointed out that this was not challenged in cross-examination. Mr Ogbewe also suggested that in addition to the sponsor, her husband, and their four children, the sponsor's father-in-law also lived at the property but it appears from the sponsor's evidence that he was in Pakistan.
11. The Upper Tribunal has received the Presenting Officer's minutes from the First-tier Tribunal appeal hearing, which Mr Khan has seen. This reveals that there was a single question in cross-examination, asking who lived at the house, but there was no challenge to the accommodation capacity. The sponsor said in reply that (only) she and her husband lived in the house, which turns out to have four bedrooms. There were not four children living at the property, as confirmed to me and it is unclear where that assertion contained in the grounds came from. I am also satisfied from the evidence before the First-tier Tribunal that the sister-in-law lived at a different address, as confirmed by the documents in the appellant's bundle.
12. In relation to the ability of the sponsor to afford to support the appellants in the UK, the skeleton argument prepared for the First-tier Tribunal appeal hearing submitted that the sponsor was not in receipt of public funds and she and her husband have "ample income to meet their own living needs and those of the appellants." It was submitted to the First-tier Tribunal that "it is sustainable for the sponsor to support the appellants without being an unreasonable burden on the public purse."
13. The appellant's skeleton argument submits that adequacy of accommodation was not in dispute. However, I am satisfied that whilst not a specific requirement, the respondent was entitled to look to see whether the sponsor would be able to accommodate the appellants in the UK because if not, they would likely become an "unreasonable burden" on the state.
14. However, at [11] of the impugned decision, the judge specifically addressed whether the sponsor could "adequately afford to support the appellants financially and would be able to continue to support them when they arrive." Whilst the respondent suggested that the sponsor was in receipt of Universal Credit, the judge was satisfied that this was an error and that the recipient was the sponsor's sister-in-law, not the sponsor. The judge examined the evidence and found that the sponsor had an average net monthly income of £3,311.16 with monthly expenditure of £1,309.31 before sending £561.31 to the appellants. Disposable income after all expenses was calculated at £1,056.33, as stated above.
15. Whilst the respondent questioned whether there was enough room in the sponsor's home to accommodate the appellants as well as those already resident, nothing in the evidence demonstrates that the home would be overcrowded with the addition of the four appellants. Mr Ogbewe's submissions at the First-tier Tribunal appeal hearing were based on factual error. As stated, on the evidence, there was a four-bedroomed house with only two residents in the property. It follows that on the finding that there was adequate net income to financially support the appellants, there would be no risk of them being made homeless or needing the state to provide housing for them and the judge could not reasonably reach such a conclusion on the evidence put before the Tribunal.

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16. Unarguably, the findings made were entirely open to the judge on the evidence and are adequately reasoned.
17. In the circumstances, I am satisfied that there was no material error of law in the making of the decision of the First-tier Tribunal. It follows that the respondent's appeal must be dismissed and the decision of the First-tier Tribunal must stand as made.

### **Notice of Decision**

The respondent's appeal to the Upper Tribunal is dismissed.

I make no order as to costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**21 February 2023**