



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

Case Nos: UI-2022-002786  
(EA/02649/2021)

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Entry Clearance Officer**

Appellant

**and**

**Nyla Amjad Chaudhary**  
**(no anonymity order made)**

Respondent

**Representation:**

For the Appellant: Mr Hussain, AGH Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 7 June 2023**

**DECISION AND REASONS**

1. The Respondent is a national of Pakistan who asserts that she is the 'extended family member' of her brother, an Italian national exercising treaty rights in the United Kingdom. As such she claims a right to reside under regulation 8 of the Immigration (European Economic Area) Regulations 2016 and asks that the Entry Clearance Officer (ECO) grant her entry in the form of a family permit.
2. The ECO refused to issue the permit and the Respondent appealed. The First-tier Tribunal (Judge Mulready) found as fact that the Sponsor is exercising treaty rights, that he is the Respondent's brother, and that she is indeed dependent upon him as claimed. None of that is challenged.

3. What the Entry Clearance Officer now complains of is Judge Mulready's failure to grapple with one of the points taken in the refusal notice as follows:

"Our records show that your sponsor has a spouse and has supported additional applications. I am therefore, not satisfied that it is sustainable for your sponsor to also financially support you (and your family). Therefore, after considering these factors, there is a risk that if you (and your family) did arrive in the United Kingdom that you may become a burden on the public funds system of this country"

4. This is reframed in the grounds with reference to Regulation 13(3) of the Immigration (European Economic Area) Regulations 2016 which reads:

**Initial right of residence**

**13.—(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.

(2) A person who is not an EEA national but is a family member who has retained the right of residence or the family member of an EEA national residing in the United Kingdom under paragraph (1) is entitled to reside in the United Kingdom provided that person holds a valid passport.

(3) An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation is not entitled to a right to reside under this regulation where the Secretary of State or an immigration officer has made a decision under regulation 23(6)(b) (decision to remove on grounds of public policy, public security or public health), 24(1) (refusal to issue residence documentation etc), 25(1) (cancellation of a right of residence), 26(3) (misuse of right to reside) or 31(1) (revocation of admission), unless that decision is set aside or otherwise no longer has effect.

## Findings

5. I am satisfied that Judge Mulready did omit to deal with the passage cited in the refusal notice.
6. I am not satisfied that this omission is material. That is because the evidence accepted by the Judge was that the Sponsor is not in fact financially responsible for anyone else. He is now divorced from his wife in Pakistan, he has no children and he is not supporting anyone else. He has never claimed public funds. The evidence before the Tribunal established that he is working in the UK and earns approximately £1600 per month after tax. It is from this that he is currently supporting the Respondent in Pakistan, and avers that he will use to continue supporting her once she comes to live with him here. He had substantial savings at the date of the appeal. There was, and is, no evidence at all to indicate that the Respondent, nor indeed her EEA national brother, will become an unreasonable burden on public funds.
7. For this reason the appeal is dismissed.
8. I should add that I have my doubts about whether Regulation 13(3) has any application at all in a case such as this. As the heading explains, it is a regulation concerned with the initial right of residence held by all EEA nationals under the Regulations. Mr Amjad is not, and was not at the date of decision, exercising this right. He had already established himself and was exercising treaty rights as a worker. Further the sub-clause itself is framed in the present tense which indicates that it is concerned with the position of people who have already entered the United Kingdom and are claiming an initial right of residence: “an EEA national or the family member of an EEA national who *is* an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation”. That is not the case here.

## Notice of Decision

9. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.
10. There is no order for anonymity.

Upper Tribunal Judge Bruce  
7<sup>th</sup> June 2023