



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006236

First-tier Tribunal No:
EA/50376/2022 (IA/02308/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR PRITPAL SINGH
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Raza, Counsel

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 1 August 2023

DECISION AND REASONS

1. The Appellant is a national of India, date of birth 26 March 1962, who on 29 December 2020 applied for a residence card under the Immigration (EEA) Regulations 2016 as the extended family member of her brother-in-law, Yugraj Singh (hereinafter referred to as the Sponsor), an Italian national who was married to the Appellant's sister.
2. The Respondent refused his application in a decision dated 17 March 2021 because the Appellant had neither demonstrated he had been

dependent on the Sponsor for his essential needs or formed part of the Sponsor's household prior to entering the United Kingdom and had neither continued to be a part of his household nor been dependent on him for his essential needs. The Appellant appealed this decision on 1 March 2022.

3. The case was listed before Judge of the First-tier Tribunal Row (hereinafter referred to as the FTTJ) on 18 November 2022 who subsequently dismissed the appeal.
4. Permission to appeal was sought on behalf of the Appellant by his representatives. The grounds argued the FTTJ had erred by failing to correctly apply Regulation 8(2) of the 2016 Regulations in accordance with the accepted evidence that the Appellant became a dependent member of the Sponsor's household in 2019 upon the marriage of the Sponsor to the Appellant's sister.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Austin on 16 December 2022 who found the grounds arguable.
6. Mr Raza adopted the grounds of appeal and submitted Regulation 8(2)(b) of the 2016 Regulations is subdivided and covered those residing overseas and then with the use of the word "or" created an alternative criteria when referring to being a member of the Sponsor's household. Mr Raza submitted the use of the word "or" broke the link that there was a requirement for the Appellant to be outside the United Kingdom.
7. Mr Tan adopted the Rule 24 statement dated 2 February 2023 and submitted there was no error in law. The Appellant had to demonstrate he formed a part of the Sponsor's household before he came to the United Kingdom and not simply demonstrate he was now a member of the Sponsor's household. This position, he submitted, is supported in Dauhoo (EEA Regulations- reg 8(2)) [2012] UKUT 79 (IAC) and the grounds of appeal erroneously sought to argue the fact the Appellant was dependent on the Sponsor between 2016 and 2019 before he married the Sponsor's sister.
8. No anonymity direction is made.

DISCUSSION AND FINDINGS

9. The ground of appeal concerned how the FTTJ had applied and interpreted Regulation 8(2)(b) of the 2016 Regulations. Having considered the grounds advanced by both parties I find there was no error of law for the reasons hereinafter given.
10. It was not disputed that the Appellant had come to the United Kingdom as a visitor in October 2016 and overstayed. He did not apply or come to this country as a member of the Sponsor's family and at that date he was not financially dependent upon the Sponsor.

11. Since October 2016 the Appellant has lived with the Sponsor and he later married the Sponsor's sister on 12 January 2019. He made an application on 29 December 2020 for a residence card relying on Article 10.2 of the Withdrawal Agreement and Article 3.2 of the Directive.
12. The Appellant accepted he never formed part of the Sponsor's household before he came to the United Kingdom but Mr Raza argued the Appellant had become a member of the Sponsor's household in 2016 and fell within the 2016 Regulations after he married the Sponsor's sister in 2019 and because he was already here there was no requirement for him to live outside the United Kingdom.
13. The leading case in this matter is Dauhoo. Permission to appeal had been granted on the basis it was found to be arguable the Appellant met the prior dependency requirement because he had been living with the Sponsor since 2016 and more particularly after his marriage in 2019.
14. Regulation 8(2) of the 2016 Regulations states:

“The condition in this paragraph is that the person is—

 - (a) a relative of an EEA national; and
 - (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—
 - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.”
15. This appeal centres around Reg 8(2)(b) and whether being a member of the household is sufficient. The FTTJ found the Regulation was not met because whilst the Appellant was a member of the Sponsor's household, he had never been a member of his household in a country other than the United Kingdom. During the hearing I asked Mr Raza whether he had any authority to support his argument and he indicated he did not.
16. Regulation 8(2)(a) states the person coming claiming to be an extended family member must be a relative of the EEA national and Regulation 8(2) (b) commences by saying this person is “residing in a country other than the United Kingdom”. Whilst Mr Raza adopted the grounds of appeal he was unable to explain why this requirement did not apply to the facts of this case.

17. The Regulations required an applicant to either be dependent upon the EEA national or a member of the EEA national's household and both before the person comes to this country and afterwards.
18. I am satisfied that either of these two criteria have to be demonstrated before the extended family member comes to the United Kingdom. Any other reading of the Regulation would be nonsensical.
19. I therefore found there was no merit to Mr Raza's argument and I dismissed the appeal.

Notice of Decision

There is no error in law. The First-tier Tribunal's decision shall stand and the appeal is dismissed.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
2 August 2023