



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

Appeal Number: EA/02124/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 January 2018**

**Decision & Reasons
Promulgated
On 23rd January 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**SEHAR FATIMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Rothwell, counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Housego promulgated on 24 April 2017 dismissing her appeal against the decision of the respondent made on 9 February 2016 to refuse to issue her with a family permit under the Immigration (European Economic Area) Regulations 2006 to join Mr Muhammed Javeed, a Belgian citizen, living and working in the United Kingdom.
2. The appellant's case is that she is the adoptive daughter of Mr Javeed and his wife, Ms Misbah Naureen who is also the appellant's maternal aunt.

The appeal before Judge Housego was heard jointly with the appeal of Ms Naureen (EA/02122/2016) who had also been refused a family permit. That appeal was allowed and she has now been issued a family permit.

3. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing. Ruled 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons which both Ms Rothwell and Mr Walker did, it being accepted that the judge had failed to make a finding as to whether the appellant is Ms Naureen's niece and/or whether she could be a relative and thus fall within reg. 8 of the 2006 EEA regulations (albeit that the situation may be different under reg.8 of the 2016 EEA Regulations).
4. Accordingly, given the failure to make findings of fact in respect of a core issue, and given also that the case may fall within the ambit of the forthcoming decision of the Supreme Court in SM (Algeria), and with the consent of the parties, I am satisfied that the appeal should be remitted to the First-tier Tribunal.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues.
2. The appeal must not be listed before First-tier Tribunal Judge Housego.

Signed

Date: 19 January 2018



Upper Tribunal Judge Rintoul