



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

Appeal Number: EA/01634/2018  
EA/01635/2018  
EA/01636/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31 October 2019**

**Decision & Reasons Promulgated  
On 5 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE COKER  
UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**ZAIN [P]  
[L P]  
[C P]**

Respondents

**Representation:**

For the Appellant: Mr Melvin, Senior Home Office Presenting  
For the Respondents: Unrepresented

**DECISION AND REASONS**

1. By her decision promulgated on 12 July 2019, a copy of which is attached, Upper Tribunal Judge Coker set aside the decision of the First-tier Tribunal. We now remake that decision.

2. We will refer to the respondents as “the claimants”. The claimants were not legally represented but Mr Miguel [P] addressed the Tribunal on their behalf.
3. Mr [P] is the biological father of the first claimant (born on 29 October 2002) and the second claimant (born on 6 October 2010). Until recently, he had believed he was the biological father of the third claimant. However, DNA evidence obtained during these proceedings (in May 2018) showed that he is not the biological father of the third claimant.
4. The claimants applied for an EEA family permit to join their father in the UK, who at the time of the application was in a durable relationship with, but not married to, a Portuguese citizen exercising Treaty rights in the UK (Ms [S]).
5. On 11 September 2019 Mr [P] and Ms [S] married. The original marriage certificate was provided to us at the hearing.
6. Mr Melvin accepted that if we found that the marriage was genuine, the appeal fell to be allowed in respect of the first and second claimants as they would be family members of Ms [S] under regulation 7(1)(b)(i) and therefore entitled to a family permit under regulation 12 of the 2016 Regulations. He accepted that the respondent did not consider the marriage to be a ‘sham’ marriage and he did not submit that the marriage was not genuine. We are satisfied that the evidence before us, in the form of an original marriage certificate from the registration district of Southwark dated 11 September 2019, is sufficient to establish that, on the balance of probabilities, Mr [P] and Ms [S] are married. We therefore allow the appeals of the first and second claimants.
7. Mr Melvin submitted that the third claimant is not a family member within regulation 7 and therefore that his appeal should be dismissed, even if the marriage is genuine.
8. We take the view that the issue of whether the third claimant should be treated as a family member under regulation 7 is not straightforward and asked Mr Melvin to address us on this, having regard to *SM (Algeria) v Entry Clearance Officer, UK Visa Section* [2018] UKSC 9. Mr Melvin proposed, and we agreed, that he would provide written submissions within 7 days, the claimant’s father then to have 7 days to respond if so advised. Thereafter we shall take a decision on the evidence before us.

### **Notice of Decision and Directions**

9. The decision of the First-tier Tribunal was set aside by Upper Tribunal Judge Coker on 12 July 2019.
10. We remake the decision of the First-tier Tribunal by allowing the appeals of the first and second claimants - EA/01634/20218 and EA/01635/2018.

**Directions regarding EA/01636/2018**

- a. The Secretary of State shall serve on Mr [P], the claimant's father, and file with the Upper Tribunal written submissions within 7 days of this decision being sent.
- b. Mr [P], the claimant's father, shall serve on the Secretary of State and file with the Upper Tribunal his response (if any) to the submissions of the Secretary of State.
- c. Thereafter the Tribunal will remake the decision in EA/01636/2018 on the evidence before it.

**Signed**



**Upper Tribunal Judge Sheridan**

**Dated: 1 November 2019**