



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

Appeal Numbers: EA/02516/2019
EA/02729/2019
EA/02731/2019

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 2nd March 2020**

**Decision & Reason Promulgated
On: 17th March 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Muqaddas [Y]

[A J]

[M F]

(no anonymity order made)

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Ahmed, Counsel instructed by MA Consultants
For the Respondent: Mr Tan, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellants are all nationals of Pakistan. They are respectively a mother (born 20th December 1987) and her two dependent daughters (born 6th January 2012 and 11th October 2009). They appeal with permission against the decision of the First-tier Tribunal (Judge P. Lewis) to dismiss their linked appeals under the Immigration (European Economic Area) Regulations 2016.

2. The Appellants all seek a *Surinder Singh* permission to reside in the United Kingdom under Regulation 9. The Sponsor of these applications is Mr Javeed Iqbal, the British husband of the First Appellant and the father of the children.
3. The Respondent had refused to issue a family permit on the grounds that in the 15 months that this family had resided together in Italy they had not made sufficient efforts to “integrate” there. The Respondent concluded that this period of residence in Italy was not “genuine”.
4. The First-tier Tribunal accepted that Mr Iqbal went to live in Italy in 2015 where he secured employment as a painter. He worked there from about December 2015 to August 2018. The Appellants joined him there in May 2017, and all three were granted residence permits. The children attended school. So far so good. The Tribunal went on to reject the claim by the First Appellant that she had made many friends in Italy, or that she had managed to learn any Italian. It further rejected the explanations as to why the family decided to move to the United Kingdom in August 2018 and concluded that the move to Italy had been a sham, a device to circumvent the Immigration Rules because Mr Iqbal could not meet the minimum income requirements therein. The appeal was dismissed on that basis.
5. Permission to appeal was granted by First-tier Tribunal Judge Woodcraft on the basis that the Judge had arguably erred in failing to apply the *ratio* of ZA (Regulation 9: EEA Regulation; abuse of rights) Afghanistan [2019] UKUT 281 (IAC). The material part of the headnote in ZA reads:
 - (1) *The requirement to have transferred the centre of one’s life to the host member state is not a requirement of EU law, nor is it endorsed by the CJEU.*
 - (2) *Where an EU national of one state (“the home member state”) has exercised the right of freedom of movement to take up work or self-employment in another EU state (“the host state”), his or her family members have a derivative right to enter the member state if the exercise of Treaty rights in the host state was “genuine” in the sense that it was real, substantive, or effective. It is for an appellant to show that there had been a genuine exercise of Treaty rights.*
 - (3) *The question of whether family life was established and/or strengthened, and whether there has been a genuine exercise of Treaty rights requires a qualitative assessment which will be fact-specific and will need to bear in mind the following:*
 - a) *Any work or self-employment must have been “genuine and effective” and not marginal or ancillary;*
 - b) *The assessment of whether a stay in the host state was genuine does not involve an assessment of the intentions of the parties over and above a consideration of whether what they intended to do was in fact to exercise Treaty rights;*

- c) *There is no requirement for the EU national or his family to have integrated into the host member state, nor for the sole place of residence to be in the host state; there is no requirement to have severed ties with the home member state; albeit that these factors may, to a limited degree, be relevant to the qualitative assessment of whether the exercise of Treaty rights was genuine.*
- (4) *If it is alleged that the stay in the host member state was such that reg. 9 (4) applies, the burden is on the Secretary of State to show that there was an abuse of rights.*
6. Before me Mr Tan conceded that applying the guidance in ZA to the facts in this case the appeal must be allowed. There was no dispute that the family had lived together in Italy for 18 months, or that Mr Iqbal had been exercising treaty rights there. The intentions of the parties was irrelevant, and the Secretary of State had produced no evidence capable of showing that there had been an abuse of rights. The First-tier Tribunal erred in its focus on intentions, and properly construed, the period of residence in Italy was “genuine”. It followed that the appeal must be allowed.

Decision

7. The decision of the First-tier Tribunal is set aside.
8. There is no order for anonymity.
9. I re-make the decision in the appeal as follows: the appeal is allowed under the Immigration (European Economic Area) Regulations 2016.



Upper Tribunal Judge Bruce
2nd March 2020