



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

**Appeal Number: UI-2022-002866**  
on appeal from EA/13719/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 October 2022**

**Decision sent to parties on:  
On 12 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**And**

**MATEEN AMTUL  
[NO ANONYMITY ORDER]**

Respondent

Representation:

For the appellant: Mr Stefan Kotas, a Senior Home Office Presenting Officer

For the respondent: Marya Gajjar, Sponsor

**DECISION AND REASONS**

1. The Entry Clearance Officer appeals with permission from the decision of the First-tier allowing the claimant's appeal against her decision on 25 August 2021 to refuse entry clearance for the claimant to join her sponsor, who is a citizen of the Netherlands and thus an EEA citizen, as a family member, under the EU Settlement Scheme (EUSS). The claimant is a citizen of Pakistan.
2. **Mode of hearing.** The hearing today took place face to face. The sponsor appeared for the claimant.

## **Background**

3. The claimant is a 21 year old woman who is seeking to join her sponsor, her maternal first cousin. She says that her own parents, her brother, and the claimant herself all depend on her cousin, who is her mother's niece.
4. The claimant also asserts that she has a serious health condition which leads to her having seizures and nosebleeds, and that treatment for her health problems is difficult because she lives in rural Pakistan, 4 hours' travel from the hospital in Lahore where she can receive treatment.

## **First-tier Tribunal decision**

5. The First-tier Judge considered the application on the papers, at the claimant's election. On the claimant's side, there was nothing before the Judge save her notice of appeal, her grounds of appeal, and the decision under challenge.
6. The Entry Clearance Officer did not provide a bundle to assist the First-tier Tribunal in considering the appeal.
7. The First-tier Judge found that the claimant was not a family member, but then proceeded to apply the definition of extended family member in Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (as saved). The core of her reasoning is at [15]-[16]:

"15. ... I find that the [claimant] does not come within the definition of a family member. However, in her grounds of appeal she asserts that she is an extended family member of the Sponsor and relies upon Regulations 8(2), 8 (3), 8 (4). In light of *OA and NK* I accept that the [claimant] is a relative, cousin of the sponsor and is resident in Pakistan. I also note that dependency has not been disputed by the [Entry Clearance Officer] and therefore I find that the [claimant] satisfies the requirements of Regulation 8 (2) (a) and Regulation 8 (2) (b). Although the [claimant] also asserts that she has a serious health condition I make no finding with regards on her health as I have found that she meets the requirements of Regulations 8 (2) (a) and (b) of the 2016 Regulations and meets the definition of a relative under Annex 1 (a)(i)(aa) &(bb) of Appendix EU.

16. I also find that the [claimant] made her application on 28 December 2020 which was prior to 31 December 2020 (extended to 30 June 2021) as permitted by EU Appendix. Accordingly is not precluded as an extended family member."

8. The Entry Clearance Officer appealed to the Upper Tribunal.

## **Permission to appeal**

9. Permission to appeal was granted for the following reasons:

"2. The grounds assert that the Judge erred in deciding whether the [claimant] was an extended family member with reference to the

Immigration (European Economic Area) Regulations 2016 (the Regulations) rather than Appendix EU (Family Permit) of the Immigration Rules.

3. Paragraphs 15 and 16 of the Judge's decision do not explain how the Judge reasoned that an extended family member under the Regulations is entitled to entry clearance under Appendix EU (Family Permit). She only goes as far as explaining how this makes the [claimant] under Appendix EU, which is not the relevant section of the Immigration Rules. "

### **Rule 24 Reply**

10. There was no Rule 24 Reply on the claimant's behalf.
11. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

12. The sponsor appeared in person for the claimant. She told me that she was trying to get her whole extended family in to the UK: her maternal aunt, her aunt's husband, the claimant and her brother. Applications had been made for each of them, and refused on the same grounds, but their appeals were not linked before the First-tier Tribunal or Upper Tribunal.
13. The claimant's mother was the sponsor's maternal aunt, and her aunt's husband, who used to be a farmer, was paralysed now. Her aunt was not an educated woman and her son was too young to understand. The financial situation of the family was deteriorating and the sponsor was looking after them all, from a distance.
14. The claimant had lifelong health issues, and did not have access to good medical care in Pakistan. She was having seizures and bad nosebleeds. The family lives in a remote village, the nearest hospital was 4 hours' travel away, in Lahore. The sponsor had travelled over to take the claimant to hospital and stayed for 'a couple of months' to support the claimant until her health was stable.
15. For the Entry Clearance Officer, Mr Kotas pointed out that the claimant's application was made under the EUSS not under Article 8 ECHR, nor under the 2016 Regulations, which are no longer applicable when considering EUSS claims. The Entry Clearance Officer was not obliged to treat an application on a different basis from that which the applicant had chosen.

### **Analysis**

16. The claimant's application was for an EU Settlement Scheme Family Permit, as a close family member of an EEA national with a UK immigration status under the EUSS. The exhaustive list of 'family members' in Appendix EU (Family Permit) Annex 1 does not include aunts, uncles, or first cousins. The definition of 'family member of a relevant EEA citizen' in Annex 1 to Appendix EU (Family Permit) makes no provision for dependent relatives of EEA citizens, unless they are a spouse, civil partner, durable

partner, or ascendant or descendant relative, which the claimant and her family are not, in relation to this sponsor.

17. Accordingly, this appeal cannot succeed.

## **DECISION**

18. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Signed [Judith AJC Gleeson](#)  
2022

Date: 8 November

Upper Tribunal Judge Gleeson