



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003158
First-tier Tribunal No:
EA/15162/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AN ENTRY CLEARANCE OFFICER

Appellant

and

MUHAMMAD IMRAN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr McVeety, a Senior Home Office Presenting Officer.
For the Respondent: Mr Chaudhry, appellants representative.

Heard at Phoenix House (Bradford) on 3 March 2023

DECISION AND REASONS

1. The above respondent, a citizen of Pakistan born on 10 February 1982, appealed to the First-tier Tribunal the refusal by an Entry Clearance Officer (ECO) of his application for an EEA Family Permit.
2. The application was refused as the ECO was not satisfied there was sufficient evidence with the application to establish dependency or that the sponsor and above respondent were related as first cousins.
3. First-tier Tribunal Judge McClure ('the Judge') found the above respondent and sponsor are related as claimed and were therefore cousins [30], that remittances sent to the above respondent in Pakistan had been used for the purposes of meeting his essential needs, and that the above respondent was therefore dependent upon the EEA national sponsor and therefore entitled to a family permit [33].
4. Permission to appeal was sought on the basis the Judge had overlooked the requirement of regulation 12(5) of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations). It is stated that even if dependency on the EEA sponsor is found to be established the appeal should only have been

allowed to the extent that an extensive examination of the personal circumstances of the applicant must be undertaken by the ECO. Reliance is placed in the grounds on the decision of the Upper Tribunal in Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340 (IAC).

5. Permission to appeal was granted by a Designated Judge of the First-tier Tribunal on the basis the grounds seeking permission to appeal disclose an arguable error of law in relation to the failure of the Judge to take account of the ECO's residual discretion provided for by regulation 12(4).

Discussion

6. Regulation 12(4) of the EEA 2016 Regulations reads:

- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
 - (a) the relevant EEA national satisfies the condition in paragraph (1) (a);
 - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

7. The reference in the application for permission to appeal to regulation 12(5) is a reference to the activities to be undertaken by the ECO if an application is received under paragraph 4. As noted in the grant of permission to appeal, the alleged error arises as a result of the Judge failing to fully consider regulation 4.
8. The Judge finds that regulation 4(a) is satisfied in that the EEA national is residing in the United Kingdom in accordance with the Regulations, that regulation 4(b) is satisfied as the extended family member wants to join the EEA national in the UK but makes no finding in relation to regulation 4(c).
9. Mr McVeety accepted this was a technical challenge to the Judge's decision and that having reviewed all the available materials, including the fact the ECO had not raised any issues relating to the appellant, he could not identify any issue that would lead to discretion not being exercised in the appellant's favour. It was accepted that if the Upper Tribunal were to allow the appeal to the extent it was remitted to the ECO to enable the required examination to be undertaken, the outcome will be the same as that found by the Judge.
10. Accordingly, I find that although the ECO makes out the challenge when one considers the wording of Regulation 12(4), as the outcome would be the same I find that error not material.

Notice of Decision

11. There is no material error of law. The determination of the First-tier Tribunal shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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3 March 2023