



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001152
UI-2023-001153
UI-2023-001154
UI-2023-001155
First-tier Tribunal Nos: EA/52648/2021
EA/52649/2021
EA/52650/2021
EA/52651/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13 July 2023**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**(1) SAJAD EHSAN
(2) BEENISH ZIA
(3) ABDUL SAMMAD
(4) BISMA MAHEEN
(NO ANONYMITY ORDER MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Anwar Miah, instructed by Abbott & Harris Solicitors
For the Respondent: Amrika Nolan, Senior Presenting Officer

Heard at Field House on 23 June 2023

DECISION AND REASONS

1. The appellants appeal with the permission of First-tier Tribunal Judge Pickering against the decision of First-tier Tribunal Judge Karbani (“the judge”). By her decision of 13 October 2022, the judge dismissed the appellants’ appeals against the respondent’s refusal of their applications for family permits as the extended family members of an EEA national who was exercising Treaty Rights in the United Kingdom.

2. The appellants are Pakistani nationals. The first and second appellants are the parents of the third and fourth appellants, who are both minors.
3. By their applications for family permits, the appellants sought to join a Belgian national in the United Kingdom. He is Ali Raza, the first cousin of both the first and second appellants and therefore the uncle of the third and fourth appellants. It has never been in dispute that he is a Belgian national or that he was a qualified person.
4. The applications were refused by the ECO because: (i) she was not satisfied that the appellants were related to the sponsor as claimed; and (ii) she was not satisfied that the appellants were dependent on the sponsor.
5. An Appeal Skeleton Argument was filed in compliance with the FtT Procedure Rules. The respondent reviewed her decision in response. She confirmed in that review that the issues were as identified in the notice of refusal.
6. The judge heard the appeal on 4 October 2022. The appellants were represented by counsel, the respondent by a Presenting Officer. The judge heard oral evidence from the sponsor and submissions from the representatives. At [9] of her decision, she recorded that the Presenting Officer had submitted that the appellants' financial dependency upon the sponsor had not been 'consistent', in that there had been a break in that dependency between 2005 and 2019.
7. In her reserved decision, the judge found that the appellants were related as claimed to the sponsor: [17]. At [18]-[20], the judge found that the appellants had been dependent on the sponsor to meet their essential needs since January 2020.
8. Then, at [21]-[22], the judge accepted the submission made by the respondent that the appellants dependency on the sponsor had not been 'continuous'. She noted that the appellants and the sponsor had not been part of the same household since 2005 and that the first appellant had been working in a bank until 2019. There was, she concluded, a 'clear break in dependency for 14 years between 2005 and 2019'. Having recalled what was said in *Chowdhury (Extended family members: dependency)* [2020] UKUT 188 (IAC), the judge found that the break in dependency meant that the appellants were not the extended family members of the sponsor.
9. The grounds of appeal to the Upper Tribunal submitted that the judge had misdirected herself in law in requiring the appellants to show that they had been continuously dependent on the sponsor. Whilst such a requirement existed in relation to applications under regulation 8(2)(c) of the Immigration (EEA) Regulations 2016, there was no such requirement in relation to regulation 8(2)(a), which was the provision which applied to these appeals. Judge Pickering considered that ground to be arguable.
10. It is regrettable that the respondent did not file a response to the grounds of appeal under rule 24 in this matter. Had she done so, she would have made the concession which Mr Nolan quite properly made at the hearing before me. She accepted that the judge had erred in law in requiring there to have been 'continuous dependency'. That requirement flows from the words 'continues to be dependent on him' in regulation 8(2)(c), as the Court of Appeal explained in *Chowdhury v SSHD* [2021] EWCA Civ 1220; [2021] 1 WLR 5544. There are no

such words in regulation 8(2)(a) and the judge erred in accepting the Presenting Officer's submission that there was any such requirement. The requirement in regulation 8(2)(a) is simply for present dependency or present membership of a household.

11. As Ms Nolan also accepted, the FtT's findings – as summarised at [7] above – were determinative of the question of whether the appellants are the extended family members of the sponsor. The appeal should have been allowed on that basis, with the judge then making it clear that it was then for the respondent to consider whether to exercise her discretion to issue a family permit under regulation 12(4)-(5) of the 2016 Regulations: *MO (Iraq)* [2008] UKAIT 61 refers.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside. I remake the decision on the appeal by allowing the appellants' appeals. It remains for the respondent to consider whether to exercise her discretion to issue family permits under regulation 12(4)-(5).

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 June 2023