



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

Appeal Number: EA/13136/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2018**

**Decision and Reasons Promulgated
On 15 January 2019**

Before

**UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE JACKSON**

Between

**BIJOYA RANI DAS
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik, Counsel instructed by M-R Solicitors
For the Respondent: Mr E Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the Secretary of State's decision to refuse her a residence card under the Immigration (European Economic Area) Regulations 2006 as the extended family member of a British citizen. The appellant is the unmarried partner of that British citizen.
2. The grounds of appeal to the First-tier Tribunal and indeed the covering letter to the respondent argued both that the family member provisions in

regulation 7, together with regulation 9 of the EEA Regulations were engaged (the latter being the *Surinder Singh* provisions for family members) and also that the regulation 8 provisions dealing with extended family members were engaged. The Secretary of State made no decision on regulation 8 and neither did the First-tier Tribunal. Whilst regulation 9 expressly only applies to family members and not extended family members (unless recognised as such by the issue of a residence permit by the authorities in the United Kingdom), for the reasons set out below, it was an error of law for the First-tier Tribunal not to have considered and determined whether the *Surinder Singh* provisions could extend to a family member such as the Appellant in this case.

3. In Article 3(2)(b) of Directive 2004/38, the host Member State is required, in accordance with its national legislation, to ‘facilitate entry and residence for’ the following persons:

“3 (2)... (a) Any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.”

4. Subsequent to the decision of the First-tier Judge, the Court of Justice of the European Union handed down on 12 July 2018 its decision in *Secretary of State for the Home Department v Banger (Citizenship of the European Union - Right of Union citizens to move and reside freely within the territory of the European Union - Judgment)* [2018] EUECJ C-89/17, concerning the *Surinder Singh* free movement right to include partners with whom a Union citizen has a duly attested durable relationship, as in Article 3(2)(b) set out above.
5. The Secretary of State and the First-tier Tribunal should have considered whether the *Banger* extension also extended as far as Article 3(2)(a) other family members (in the UK Regulations, extended family members). We are satisfied, in the light of *Banger* that requires to be considered now.
6. The complete failure to engage with the ground of appeal in relation to regulation 8 is an error of law and in the light of *Banger* arguably at least that it may be material.
7. Accordingly the decision of the First-tier Judge is set aside and the decision will be remade in the First-tier Tribunal on a date to be fixed.

Signed **Judith AJC Gleeson**
2019

Date: 3 January

Upper Tribunal Judge Gleeson