

Case C-83/11 Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others [2012]

Facts: A Bangladeshi national had married an Irish citizen who was working in the UK. Members of the Bangladeshi national's family subsequently applied for EEA family permits in order to obtain their right to reside in the UK. Those applications were refused. The question was whether Art. 3(2) of Directive 2004/38, providing that the host Member State would have to facilitate entry and residence of beneficiaries (which includes family members of an EU national), would work to yield the opposite result.

Held: While Art. 3(2) of Directive 2004/38 does provide that host Member States should facilitate the entry of dependants into their territory, this did not mean that those Member States would be obliged to do so in all circumstances. To this effect, EU law has clearly drawn a distinction between a Union citizen's family members as defined in Article 2(2) of Directive 2004/38, who enjoy, as provided for in the directive, a right of entry into and residence in that citizen's host Member State, and the other family members envisaged in Article 3(2) of the directive, whose entry and residence has only to be facilitated by that Member State.

Moreover, the situation of dependence needed to invoke the Directive's provision in this respect would need to have existed in the country of origin.

While it was for the national court to decide if the conditions laid down were proportionate or not, the criteria would have to be consistent with the normal meaning of the term 'facilitate' and of the words relating to dependence used in Article 3(2) and must not deprive that provision of its effectiveness.