



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

**Case No: UI-2023-002290
UI-2023-002289**

**First-tier Tribunal No:
EA/07222/0222 EA/07223/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 08 April 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Hardik Dhiraj Machhi (1)
Meeta Hardik Machhi (2)
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellants: Mr S Vokes, Counsel

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 7 December 2023

DECISION AND REASONS

INTRODUCTION

1. The appellants are nationals of India. They are husband and wife. On 18 February 2022 they applied for an EU Settlement Scheme (EUSS) Family Permit. The first appellant applied as a 'family member of a relevant EEA citizen'. His sponsor is his mother, Hansa Ramchandra, a Portuguese national. The second appellant is the daughter-in-law of the sponsor. The applications were refused by the respondent on 11 July 2022. The respondent said the first appellant had not provided adequate evidence to

show that he is dependent on a relevant EEA citizen, as set out in Appendix EU (Family Permit) of the Immigration Rules. The second appellant's application was refused because her relationship to the sponsor does not come within the definition of a 'family member of a relevant EEA citizen' as stated in Appendix EU (Family Permit).

2. The appellants' appeals were dismissed by First-tier Tribunal Judge Taylor ("Judge Taylor") for reasons set out in a decision promulgated on 24 April 2023.
3. At the conclusion of the hearing before me I informed the parties that I allow the first appellant's appeal against the decision of Judge Taylor, but dismiss the second appellant's appeal. I informed the parties that I will set out my reasons for that decision in writing and this I now do.

GROUND OF APPEAL

4. The appellants claim the judge erred in law by failing to consider 'in depth' the best interests of the appellants' children who are living in the UK. They claim the judge failed to have any proper regard to the evidence that was before the FtT that comprises of money transfers and receipts that demonstrate the appellants are dependent on their sponsor. They were members of the sponsor's 'household' previously and they continue to be dependent on her.
5. Permission to appeal was granted by First-tier Tribunal Judge Singer on 5 June 2023. Judge Singer said:

"2. The decision is arguably very brief and it is arguable that, in respect of the first Appellant, that brevity was such that the Judge did not have adequate regard to relevant evidence.

3. I do not exclude permission on any ground for either Appellant, but the grounds presently pleaded do not set out with clarity how the second Appellant could bring herself as having a substantive right within the scope of the Withdrawal Agreement, or Appendix EU (Family Permit), if the 2016 Regulations were not in play."

THE HEARING OF THE APPEAL BEFORE ME

6. Mr Vokes candidly and quite properly in my judgement, accepts that the decision of the Upper Tribunal in *Batool & Ors (other family members: EU exit)* [2022] UKUT 00219 (IAC), is such that on any view, the second appellant's appeal cannot succeed. In *Batool*, the Upper Tribunal confirmed:

"(1) An extended (oka other) family member whose entry and residence was not being facilitated by the United Kingdom before 11pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

(2) Such a person has no right to have any application they have made for settlement as a family member treated as an application for facilitation and residence as an extended/other family member."

7. Mr Vokes accepts that in such an appeal, there is no scope for the Tribunal to consider arguments concerning human rights or the best interests of children under section 55 of the Borders, Citizenship and Immigration Act 2009.
8. The focus of the submissions before me was therefore upon the first appellant's appeal. Mr Vokes submits the judge summarised the evidence of the sponsor at paragraphs [12] to [17] of her decision. The sponsor gave evidence regarding the first appellant's limited earnings and the financial support that she continues to provide. The judge noted, at [15], her evidence that the appellant has to pay various utility bills even though the property is owned by the sponsor's husband. Mr Vokes submits that in the findings and conclusions that are set out at paragraphs [24] to [29], the judge does not make any finding as to whether the judge accepted or rejected the evidence of the sponsor. All that is said by the judge, at [17], is that there was no documentary evidence regarding the appellant's current domestic circumstances in India. Notwithstanding the absence of documentary evidence, there was the evidence of the sponsor, that the judge simply failed to engage with.
9. In reply, Ms Arif submits that at paragraph [9] of the decision the judge confirms she has considered the documents before the Tribunal in full. Ms Arif submits it can be inferred from what is said in paragraph [26] that the judge did not have sufficient evidence regarding the appellants' domestic circumstances in India and she therefore concluded the appellants had not discharged the burden the proof.

DECISION

10. Although brevity is to be commended a, party appearing before a Tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the Tribunal is addressing its mind. In some cases, it may be perfectly obvious without any express reference to it by the Tribunal; in other cases, it may not. It is now well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular: (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently.
11. Although I can see the force in the submissions made by Ms Arif, the judge's focus was upon a lack of documentary evidence. I accept as Mr Vokes submits, there was evidence in the appellant's bundle of money transfers and evidence of the payment of utility bills by the first appellant. The sponsor gave evidence that she continues to provide financial support to the appellants because the first appellant's income is not sufficient to meet their needs. Although that is not documentary evidence and the judge may have been entitled to attach little weight to the oral evidence of the sponsor in the absence of documentary evidence to support the claims

made, it was nevertheless evidence that the Tribunal was required to engage with. I am persuaded that the judge made no finding as to whether she accepted or rejected the evidence of the sponsor. Oral evidence that is material to the issue under consideration is evidence that a judge is bound to consider. If the oral evidence is rejected, it is incumbent on a judge to explain, even briefly, why that evidence is rejected.

12. I am satisfied therefore that the judge's failure to consider the sponsor's oral evidence is such that the first appellant has established that there is a material error of law in the decision of the Judge and the decision must be set aside as far as the first appellant is concerned.
13. As to disposal, I bear in mind the guidance provided in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). Whilst there is only a narrow issue to be determined, considering (i) the amount of fact finding needed as no findings can be preserved, and (ii) the loss of the two-tier decision making process if the decision is retained in the Upper Tribunal, I consider the appropriate course of action is for the matter to be remitted to the First-tier Tribunal for hearing afresh.

NOTICE OF DECISION

14. The decision of First-tier Tribunal Judge Taylor to dismiss the second appellant's appeal stands.
15. The decision of First-tier Tribunal Judge Taylor to dismiss the first appellant's appeal involved the making of a material error of law and is set it aside.
16. I remit the first appellant's appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.
17. No anonymity order is made.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 March 2024