



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

**Appeal Number:
UI-2022-003802; EA/00223/2022
UI-2022-003804; EA/00303/2022**

THE IMMIGRATION ACTS

**Heard at Field House
On the 28 November 2022**

**Decision & Reasons Promulgated
On the 01 December 2022**

Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

Between

**Jaswinder Pal SINGH
Kulwinder KAUR
(No anonymity direction made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Dar of Archbold Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of India born on 10 January 1964 and 14 March 1965 respectively. They are husband and wife. They appeal against the linked decisions of First-tier Tribunal Judge Chana promulgated on 10 June

2022 with the permission of First-tier Tribunal Judge Povey granted on 3 August 2022.

2. On 29 June 2021 the Appellants made applications for EEA Family Permits under the EU Settlement Scheme ('EUSS') on the basis that they were each the family member of a relevant EEA citizen - specifically the dependent parents of a person whose spouse was an EEA citizen. The Appellants claimed to be the parents of Vikramjit Singh who was married to Aurelija Vaseryte, a citizen of Lithuania.
3. On 8 November 2021 both applications were refused for reasons set out in respective similarly drafted Notices of Decision. In substance it was not accepted that the relationship between the Appellants and Vikramjit Singh had been established. No further exploration was seemingly given to the application, for example in respect of the claimed dependency. In material part the Notice of Decision in respect of the First Appellant was in these terms:

"You have stated that the family relationship of the EEA citizen sponsor to yourself is dependant parent in law.

As evidence of your relationship you have provided a Government of Punjab birth certificate to demonstrate your parentage to your son. It has been noted that this birth was registered on 15th January 2011, approximately 23 years after the birth. Given this the late registration of the birth certificate it cannot be accepted as reliable evidence in the absence of other relevant birth documentation issued at the time of the event or other credible documentation evidencing your parentage.

As result of the above, I am not satisfied, based on the evidence you have provided in isolation, that you are a 'family member of a relevant EEA Citizen'."

4. The Notices of Decision informed the Appellants as to their options, including the availability of an appeal:

"You can also appeal this decision to the First Tier Tribunal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020. You have 28 days from the date since you received this decision to appeal.

You can appeal on the basis that the decision is not in accordance with the EUSS Family Permit Rules, or that it breaches any rights you have under the Withdrawal Agreement, the EEA EFTA Separation Agreement, or the Swiss Citizens' Rights Agreement. You may bring or continue an appeal from inside or outside the UK.

Information and support on how to appeal, the process, and the fees payable are all available online..."

5. The right of appeal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020 is pursuant to regulation 5, which in material part states:

“Right of appeal against decisions made in connection with scheme entry clearance

5. *A person may appeal against a decision made on or after exit day*

—

(a) where the person applies for scheme entry clearance on or after exit day, to refuse their application,”

6. The Appellants appealed to the IAC accordingly.
7. In the Grounds of Appeal it was stated, amongst other things:
- “As I belong to a backward area of Punjab, and we never need of our birth certificates. I have attached the birth certificate notification from Health and family welfare department that confirms father and mother name and all contents that shows my relationship to my son.”*
8. These circumstances, and the circumstances in which the Sponsor's birth subsequently came to be registered were further addressed in the witness statements of the Appellants.
9. At the hearing of the appeal the Judge of her own motion raised an issue as to whether there was a right of appeal. For reasons that are unclear the Judge appears to have conceived the notion that the Appellants were to be considered as 'extended family members' rather than as 'family members' of an EEA national. This was a misconception. This error informed the Judge's analysis of the availability of a right of appeal, and in turn her conclusion that there was no right of appeal. The Judge's analysis also drew upon the EEA (Immigration) Regulations 2016 rather than the applicable Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.
10. The Judge's analysis in this regard was serially and fundamentally wrong. Ms Everett did not seek to uphold the decision. We have no hesitation in concluding that there were errors of law, which in substance denied the Appellants a hearing.
11. Given *“the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal”* (Practice Statement, paragraph 7.2(a)), in that the approach of the First-tier Tribunal Judge was such as to fail to entertain the substance of the linked appeals, making no evaluation of the principal issue in the refusal of the relationship between the Appellants and their claimed son, our preliminary view was that the appeals should be remitted to the First-tier Tribunal to remake the decisions.

12. In canvassing this with the parties, Ms Everett indicated that she was content to concede the issue in respect of relationship. However, she indicated that there was no such concession in respect of dependency notwithstanding that it had not been expressly raised in the decision notices: the issue of dependency had not been conceded, but rather had not been considered. Even with the assistance of Mr Dar we were unable to identify in the available documents anything directly relevant to dependency beyond evidence of monetary transfers to the Appellants: in particular there was nothing directly addressing the means of the Appellants or their outgoings.
13. In all the circumstances it seemed to us that there was still a live issue in the appeal, and given that there had been no hearing of substance it was appropriate that this issue be remitted to the First-tier Tribunal - which will also afford the Appellants the opportunity of filing any further evidence upon which they might wish to rely to address the issue of dependency.
14. Necessarily the Appellants are hereby now put on notice of the need to address the issue of dependency. However we leave the issuing of Directions to the First-tier Tribunal upon relisting - albeit anticipating that standard directions will likely suffice.

Notice of Decision

15. The decision of the First-tier Tribunal contained material errors of law and is set aside.
16. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Chana, with particular reference to the issue of dependency.

Signed: I A Lewis

Date: **28 November 2022**

Deputy Upper Tribunal Judge I A Lewis