



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006088
UI- 2022-006089
First-tier Tribunal No: EA/00919/2022
EA/00920/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 April 2023

Before

UPPER TRIBUNAL JUDGE L SMITH
DEPUTY UPPER TRIBUNAL JUDGE G BLACK

Between

MR MD IQBAL HOSSAIN AND MS SHEHERINA AKHTER TISHA
(NO ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Hussain (Acting pro bono - ZYBA law)
For the Respondent: Mr Tufan (Senior Home office presenting officer)

Heard at Field House on 28 March 2023

DECISION AND REASONS

1. The appellants, who are husband and wife, appeal against the decision of First-tier Judge Karbani (“FTT”) who dismissed their appeals under Appendix EU in a decision promulgated on 28.10.2022.

Background

2. The appellants had previously applied under the EEA Regulations 2016 as dependents (the nephew and his wife) of an EEA citizen. A previous Tribunal (FTJ AM Black) (“the previous Tribunal”) dismissed their appeals under the EEA Regs. in a decision and reasons promulgated on 25.11.2019. The appellants made a further application in June 2021 under the EUSS provisions which was refused on

29.6.2021 on the grounds that they did not meet the criteria required under the EUSS as there was no residence card. This was accepted by the appellants.

3. Before the FTT the appellants argued that they had made a valid application under the EEA Regs before the specified date, based on the production of a receipt of posting dated 31.12.20 (page 438) addressed to the respondent (UKVI) and showing a weight consistent with sending a number of documents. The appellants claimed that the envelope containing the application was returned to them some 6 months later without any correspondence. They argued that whilst the current appeal had been made under the EUSS provisions, the FTT should consider the appeal under the EEA Regs. relying on the Withdrawal Agreement. The appellants further submitted a letter confirming that the sponsor was living and working in Bangladesh as further evidence of dependency.

The FTT decision

4. The FTT took as his starting point the previous Tribunal decision following Devaseelan. The FTT considered as a preliminary issue whether the appellants application under App EU ought to be treated as a continuance of an application made under the EEA Regs. [21]. The FTT considered all of the evidence including the postage receipt [22] and found that there was insufficient evidence to depart from the previous decision. The FTT had regard to credibility and found the evidence of the appellants to be inconsistent [25].

Grounds of appeal

5. Ground 1 - the FTT's approach to whether the appeal should have been dealt with on the basis that the Applications were in time under the 2016 Regulations was flawed in its consideration of the relevant evidence;
6. Ground 2 - the FTT erred in relation to its consideration of the new evidence submitted by the Appellants.

Permission to appeal

7. UTJ Grubb granted permission as follows:

"The First-tier Tribunal (Judge Karbani) dismissed the appellant's appeals. Ground 1 raises an arguable point in relation to the judge's assessment of the evidence as to whether the appellants had made - by posting - applications under the Immigration (EEA) Regulations 2016 before 11pm on 31 December 2020. Although this was a question of fact, it is arguable that the judge reached an unsustainable conclusion on whether the evidence showed posting by Royal Mail on 31 December 2020 prior to 11pm.

2. I do not understand Ground 2 which appears to relate to findings not made by the judge who decided the appeal on the basis the appellants had not made applications under the Immigration (EEA) Regulations 2016 and also did not fall within the EUSS. In case I am missing a point, I would not exclude consideration of Ground 2 if, indeed, it is relevant.

3. For these reasons, permission to appeal is granted."

Discussion and decision

8. We heard submissions from Mr Hussain and from Mr Tufan as to the first ground of appeal. In the event it was not necessary to go on to consider the second ground. We found that there was no material error of law by the FTT. The FTT considered all of the evidence and reached findings that were open to him. The FTT found that the postage receipt failed to establish what documents were submitted on 31.12.20. The FTT found that “there was no dispute that the address is the respondent’s correspondence address, or about the validity of this receipt” [22] and at [23] “the weight indicates that it was a weighty bundle”. The FTT found that there was no record from the Respondent of receiving any application or of any application being processed and returned as invalid. The FTT found the appellants evidence to be inconsistent as to the disposal of the envelope. We are satisfied that the FTT considered all the evidence in the round and which was not limited to the receipt of posting [24-25].
9. We observe that the appellants did not rely on any other material in support and that there was nothing from the respondent to indicate that any application had been made or received. The appellants made no mention of any earlier “application” when making this application which led to the decision under appeal, until after the appeal was lodged. There was no reference to the same in a covering letter, statements or indeed the grounds of appeal. We further conclude that the appellants’ position that an in-time application made under the EEA Regs ought to be determined under the resubmitted application in June 2021 is entirely wrong and fallacious.

Notice of Decision

10. **There is no material error of law and the decision made by the First-tier Tribunal shall stand. The Appellants’ appeals remain dismissed.**

G A Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4.4.2023