



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000450
UI-2023-000443, UI-2023-000451
& UI-2023-000449
First-tier Tribunal Nos:
EA/05033/2022, EA/05047/2022 &
EA/05031/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25 April 2023**

Before

**UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAMREEN ASGHAR
MOHAMMAD SALMAN
MOHAMMAD WAHAB
MOHAMMAD ARBAB
(Anonymity order not made)**

Respondents

Representation:

For the Appellant: Ms A Nolan, Senior Home Office Presenting Officer
For the Respondents: No Appearance

Heard at Field House on 22 March 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeals of Samreen Asghar, Mohammad Salman, Mohammad Wahab and Mohammad Arbab, against the respondent's decision to refuse their applications for EU Settlement Scheme (EUSS) Family Permits as the family members of a qualifying British citizen.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and Samreen Asghar, Mohammad Salman, Mohammad Wahab and Mohammad Arbab as the appellants, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellants are nationals of Pakistan. The first appellant is the spouse of the sponsor, Yaseen Mohammad, a British citizen. The sponsor is the father of the other appellants from his previous marriage to their mother who passed away in 2012. The sponsor was living and working in Belgium from 28 July 2020 to 16 January 2022 and was granted a residence permit in Belgium valid until September 2026. The appellants joined him in Belgium on 8 August 2021 after being granted entry clearance under EU law and were issued with residence permits by the Belgian authorities as his family members, having been refused entry clearance previously in April 2021. They resided together in Belgium until 16 January 2022 when the sponsor returned to the UK because his business was struggling in Belgium as a result of the pandemic. The appellants then applied for family permits to join him in the UK, under the EUSS, on 21 February 2022.

4. The appellants' applications were refused by the respondent on 8 May 2022. The respondent considered that the appellants had not provided adequate evidence to confirm that they resided with the qualifying British citizen in Belgium. The respondent noted further that the evidence showed that the appellants had only entered Belgium in August 2021, which was after the specified date of 31 December 2020, whereas a family member of a British citizen resident in an EEA state was required to have resided in the EEA state for three months prior to the specified date. The respondent was accordingly not satisfied that the appellants had provided adequate evidence that they were family members of a qualifying British citizen, as defined in Appendix EU (Family Permit) to the immigration rules.

5. The appellants appealed against that decision and their appeals came before First-tier Tribunal Judge Mulholland on 29 November 2022. The judge considered that there was nothing in Appendix EU which required the appellants to have resided in Belgium with the sponsor three months prior to 31 December 2020. She considered that the appellants met the definition of "family members of a qualifying British citizen" since that definition included a spouse and children who had satisfied an entry clearance officer that they would be coming to the UK before 29 March 2022. She considered that the fourth appellant, who was over 21 years of age, met the definition of a child as a direct descendant of a qualifying British citizen aged over 21 who was dependent on his father and/or his stepmother at the relevant dates. On that basis she concluded that the appellants met the requirements in FP6 of Appendix EU (FP) and she accordingly allowed the appeals.

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the grounds that the judge had materially erred in law by failing properly to apply the requirements of Appendix EU (Family Permit), since the fact that there was no joint residence in Belgium before 31 December 2020 was fatal to the applications under the definitions in Annex 1 of qualifying British citizen and qualifying British children. Both of those definitions contained within Annex 1 of Appendix EU (Family Permit) required that regulation 9(2), (3) and 4(a) of the EEA Regulations 2016 were met before the specified date.

7. Permission was granted by the First-tier Tribunal and the matter was listed for hearing on 22 March 2023.

8. In a letter dated 21 March 2023, the appellants' solicitors advised the Upper Tribunal that, having considered the grounds of appeal and the grant of permission, the appellants wished to withdraw their appeals or, alternatively, requested that the appeals be determined on the documents already available without their attendance. The solicitors were informed that, since the appeal had been made by the Secretary of State, it was not open to the appellants to withdraw their appeals and that the Tribunal

would therefore proceed with the appeal hearing as listed and would make a decision in their absence as requested.

9. The matter then came before us. There was, as expected, no appearance on behalf of the appellants. We heard briefly from Ms Nolan who asked us to set aside Judge Mulholland's decision and re-make the decision by dismissing the appellants' appeals.

10. We are satisfied that the Secretary of State's grounds are made out. No doubt the appellants' representatives realised that when they had sight of the grounds and grant of permission and therefore did not seek to make any submissions at the hearing.

11. Clearly, Judge Mulholland had failed to undertake a complete assessment of the requirements of Appendix EU (Family Permit) and had failed to consider the requirements in the definition of "family member of a qualifying British citizen" in Annex 1 that:

" (b) they satisfied the conditions in regulation 9(2), (3) and (4)(a) of the EEA Regulations (as the family member ("F") to whom those provisions refer) ..., doing so (with the qualifying British citizen being treated as the British citizen ("BC") to whom those provisions refer): (i) ... before the specified date"

12. Since the appellants' residence with the sponsor in Belgium, pursuant to regulation 9 of the EEA Regulations 2016, was after 31 December 2020, they clearly could not meet the requirements in the definition of "family member of a qualifying British citizen" in Annex 1. As such they could not demonstrate that they were family members of a qualifying British citizen as defined in Appendix EU (Family Permit) to the immigration rules and were not entitled to family permits under the EUSS.

13. Judge Mulholland was clearly in error in finding that the appellants could meet the relevant requirements and in allowing the appeals on that basis. Her decision is accordingly set aside. Since the appellants could not, and cannot, succeed in meeting the requirements in Appendix EU (Family Permit), the decision must therefore be re-made by dismissing the appeals.

Notice of Decision

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and First-tier Tribunal Judge Mulholland's decision is set aside. We re-make the decision by dismissing the appellants' appeals.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 March 2023