



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002644
UI-2022-002645
First-tier Tribunal No:
EA/50588/2021
EA/50593/2021
IA/02739/2021 & IA/02859/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 March 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SHABANA SHAHEEN ALVI (1)
ARSLAN SHARIF (2)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, Counsel instructed Vista Legal Services
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 26 January 2023

DECISION AND REASONS

1. The appellants are mother and son, and are both nationals of Pakistan. They applied for a residence card as the direct family members of Ms Sehrish Sharif, a British citizen who previously exercised Treaty rights in

Ireland. The applications were refused by the respondent for reasons set out in decisions dated 10th and 11th March 2021.

2. The respondent noted that with the applications, the appellants had provided copies of their current Pakistani passports and a copy of the sponsors British passport as evidence of nationality and the relationships. The respondent concluded the appellant had not provided adequate evidence in support of their application as family members of a British citizen who was exercising Treaty rights in another EEA member state. The respondent referred to Regulation 21(5) of the Immigration (European Economic Area) Regulations 2016 which imposes a requirement that the application must be accompanied and joined by a valid national identity card or passport in the name of the EEA national. The respondent said the appellant had provided a copy of the sponsor's passport, but the respondent is unable to verify copied documents and as such, an original must be provided. The application was therefore refused on the grounds that the appellants had not provided evidence in the form of a valid national passport for their sponsor, as evidence of her nationality. The respondent did not consider whether the appellant's are family members of a British citizen in accordance with Regulation 9.
3. The appellants' appeals were dismissed by First-tier Tribunal Judge Andrew. The appellant's claim the decision of Judge Andrew is vitiated by material errors of law. Permission to appeal was granted by First-tier Tribunal Judge Carolyn Scott on 31st May 2022. She said:

"It is arguable that in determining that the appeal fails on account of the sponsor failing to produce a valid passport or ID document in accordance with the requirements of 21(5) of The Immigration (European Economic Area) Regulations 2016, the Judge failed to have sufficient regard to the decision of the Upper Tribunal in Rehman (EEA Regulations 2016 - specified evidence) [2019] UKUT 000195 (IAC)."
4. Before me, Mr Williams concedes on behalf of the respondent that the decision of Judge Andrew is vitiated by material errors of law such that it must be set aside. Mr Williams specifically concedes Judge Andrews erred in her consideration of the relevance of the decision of the Upper Tribunal in Rehman (EEA Regulations 2016 - specified evidence) [2019] UKUT

000195 (IAC). The Tribunal held the provisions contained in Regulations 21 and 42 must be interpreted in the light of European Union law. In some cases, this might involve ignoring the requirement for specified evidence altogether if a document is not in fact required to establish a right of residence. In any event, there was evidence before the First-tier Tribunal confirming the nationality of the sponsor. A copy of Ms Sehrish Sharif's passport confirming her British citizenship was in the appellant's bundle, albeit the passport was only valid until 15th November 2020. In any event, Mr Williams concedes that at paragraph [5] of her decision, Judge Andrew imposed a requirement that the appellants were living in Ireland legally, and that there was nothing before the Tribunal to show that they were ever granted lawful residence in the form of leave to remain. That, the parties submit, is not a requirement in EU law.

5. The parties agree that the decision of the First-tier Tribunal must be set aside. I do not therefore need to say anything further about the grounds of appeal. I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both Mr Holmes and Mr Williams submit that in light of the errors of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Having considered the Senior President's Practice Statement at paragraph 7.2 and the recent decision of the Court of Appeal in AEB v SSHD [2022] EWCA Civ 1512, I have decided to remit the appeal to be heard afresh by another judge of the FtT. The decision of Judge Andrew is short and the nature and extent of any judicial fact-finding necessary will be extensive. No findings can be preserved. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

NOTICE OF DECISION

6. The decision of First-tier Tribunal Judge Andrew is set aside.
7. The parties will be notified of a fresh hearing date in due course.

Signed **V. Mandalia**

Date; 26th January 2023

Upper Tribunal Judge Mandalia