



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

Case Nos: UI-2022-005975  
UI-2022-005976  
First-tier Tribunal Nos:  
EA/11817/2021 EA/11820/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 29 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MUHAMMAD YOUSAF KHAN  
ROBINA YOUSAF  
(no anonymity order made)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Patel, instructed by Mamoon Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 23 August 2023**

**DECISION AND REASONS**

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision refusing their applications for EUSS Family Permits under the EU Settlement Scheme (EUSS).
2. Although both appellants' appeals have been linked and listed together, there is in reality only an appeal by the second appellant, given that the first appellant has been granted pre-settled status under the EUSS and his appeal has effectively lapsed. That is clarified below.

3. The appellants are nationals of Pakistan born on 2 April 1960 and 1 January 1962, and are husband and wife. Their appeals arise out of the respondent's decisions of 19 July 2021 refusing their applications of 22 April 2021 for an EUSS Family Permit. The appellants' applications were made as family members of their son's Hungarian wife, Edina Erzsebet Setet, upon whom they claimed to be dependent. The applications were refused on the grounds that the respondent was not satisfied that the appellants had provided adequate evidence to show that they were family members (dependent parents) of a relevant EEA citizen, since their sponsor's spouse was issued a residence card on 19 November 2019 under regulation 8(5) on the basis of a durable relationship and not a marriage to the appellants' son.

4. The appellants appealed against the respondent's decisions and their appeals came before First-tier Tribunal Judge Mack on 8 August 2022.

5. Judge Mack, in her decision dismissing the appeals, relied upon a previous decision of First-tier Tribunal Judge Devlin, promulgated on 7 July 2021, in relation to the first appellant, which arose from a decision of 12 November 2020 refusing a previous application made under the EEA Regulations 2016 as the family member of the same EEA national sponsor, the appellants' daughter-in-law. That application had been refused on the grounds that the respondent was not satisfied that the first appellant was dependent upon the sponsor and was therefore not satisfied that he was a dependent direct family member of an EEA national in accordance with regulation 7 of the EEA Regulations 2016. Judge Devlin heard the appeal on 14 June 2021. He accepted that the first appellant was the direct relative in the ascending line of the sponsor's spouse but was not satisfied that he was dependent, for the purposes of regulation 7(1)(c), and he accordingly dismissed the first appellant's appeal.

6. Judge Mack noted that, whilst the first appellant's appeal had been heard and dismissed by Judge Devlin on 7 July 2021, the respondent had in fact withdrawn the refusal decision prior to the appeal. She also noted that the second appellant had previously applied for, and been refused, an EEA Family Permit, although she had not had an appeal in the First-tier Tribunal. Judge Mack noted that the sponsor and his EEA national partner were now married. She also noted that the first appellant had since been granted entry clearance as the dependent of the sponsor, and that it was argued before her that it was therefore perverse that the second appellant had not been granted entry clearance as well. In the absence of evidence that the first appellant's appeal had lapsed or been withdrawn, however, she proceeded to hear the appeals of both appellants.

7. Judge Mack noted that the same evidence had been produced for the first and second appellant in their applications under the EUSS and that the same issues applied to both. She was satisfied that they were husband and wife and that the sponsor was married to their child. Given that the issues and evidence were the same for both appellants, the judge considered that the principles in Devaseelan were engaged, with respect to Judge Devlin's decision, even though the second appellant had not had a previous appeal like the first appellant. The judge therefore took Judge Devlin's decision as her starting point. She found that the concerns expressed by Judge Devlin about the evidence had not been addressed before her and she found that the case presented to her was essentially the same as that presented before Judge Devlin. She found no reason to depart from Judge Devlin's decision and concluded that the appellants had failed to show that they were dependent upon their daughter-in-law for their essential needs. She accordingly dismissed the appeals, albeit noting that the first appellant had since been granted status in the UK.

8. The second appellant sought permission to appeal to the Upper Tribunal on the grounds that Judge Mack had failed to consider the grant of entry clearance to the first appellant as key new evidence which enabled her to depart from Judge Devlin's decision. Permission was granted in the First-tier Tribunal. The respondent did not file a Rule 24 response.

9. The matter came before me for a hearing. Mr McVeety admitted that the case was a 'mess' and said that it appeared that the first appellant had been granted entry clearance through an error made by the Home Office. That was due to some confusion caused by there being two applications in the system at the same time for the first appellant, one under the EEA Regulations and one under the EUSS. The first appellant's case was triaged by a Home Office caseworker who failed to notice that this was a linked case and had failed to consider it as such, and who had withdrawn the wrong decision. Mr McVeety accepted that Judge Mack had erred in law, particularly because there had been no valid appeal before Judge Devlin once the decision in the appellant's application under the EEA Regulations 2016 had been withdrawn by the Home Office, and therefore she was wrong to take Judge Devlin's decision as a starting point.

10. Ms Patel agreed that there had been an error of law in Judge Mack taking Judge Devlin's decision as a starting point when there had not been a valid appeal before Judge Devlin. She submitted that the decision should be re-made by allowing the second appellant's appeal since her application under the EUSS had been made on the basis of the same evidence as the first appellant who had since been granted pre-settled status under the EUSS. Ms Patel submitted that it was irrational and unreasonable of the judge not to allow the second appellant's appeal in such circumstances. She submitted that the first appellant's appeal had lapsed as he had been granted leave. In response to my enquiry, Ms Patel clarified that the first appellant had been given an EUSS Family Permit on 7 September 2021 and had come to the UK on 2 December 2021. He had gone back to Pakistan on 2 February 2022 and had returned to the UK in July 2023. He had been given a residence card in March 2022 on the basis of pre-settled status under the EUSS and such a residence card was usually valid for five years.

11. Although Mr McVeety relied on the principle that a mistake should not be compounded by a further mistake, he accepted that the second appellant's appeal could be allowed on the grounds stated by Ms Patel. Accordingly I advised the parties that I was setting aside the decision of Judge Mack and re-making the decision by allowing the second appellant's appeal.

12. As both parties agreed, the first appellant's appeal before Judge Devlin was not a valid appeal since the respondent had withdrawn the relevant decision under the EEA Regulations 2016 prior to the appeal. As such, Judge Mack was in error in taking Judge Devlin's findings as her starting point pursuant to the principles in Devaseelan. In so far as Judge Mack proceeded to consider, determine and dismiss the first appellant's appeal, she also erred in law, as his appeal had lapsed once he had been granted pre-settled status, and thus leave to remain, under the EUSS. It is also the case that, in concluding that there was no recent evidence justifying a departure from Judge Devlin's decision in any event, Judge Mack erred by failing to consider the weight to be given to the fact that the first appellant had been granted status under the EUSS on exactly the same evidence, and in exactly the same circumstances, as the second appellant. For all of those reasons Judge Mack's decision cannot stand and has to be set aside.

13.As for the re-making of the decision, I accept that a mistake ought not to be compounded by a further mistake, as Mr McVeety submitted. However, there is no evidential basis for concluding that the first appellant's grant of status under the EUSS was made in error. Mr McVeety stated that an error had been made by withdrawing the decision under the EEA Regulations 2016 but could not explain why the first appellant was granted status under the EUSS. It is relevant to consider that he was not only given an EUSS family permit enabling him to enter the UK, but he was then granted a further period of leave when given pre-settled status under the EUSS. The natural conclusion is that the relevant Home Office caseworker considered that he was entitled to a grant of status under the EUSS on the basis of meeting the requirements for a family permit, and subsequently pre-settled status under the EUSS, as a dependent parent of a relevant EEA citizen. Given that it is accepted that the second appellant is the wife of the first appellant, that she has the same relationship to the EEA national sponsor as her husband and that her application relied on exactly the same documents and evidence as her husband, it follows that she must be considered to have satisfactorily established that she is also the dependent parent, and thus the family member, of a relevant EEA citizen and that she is entitled to the same status as her husband under the EUSS.

14.Accordingly the appeal of the second appellant has to be allowed.

### **Notice of Decision**

15.The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. Judge Mack's decision is set aside. I re-make the decision by allowing the second appellant's appeal. The first appellant, as stated, has been granted leave under the EUSS and his appeal has therefore lapsed.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

24 August 2023