



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006033
First-tier Tribunal No:
EA/16206/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR ABDUL REHMAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aziz, Solicitor

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 29 November 2023

DECISION AND REASONS

1. The Appellant is a national of Pakistan, date of birth 15 October 1988. He made an application for an EUSS Family Permit on 22 December 2020, but the Respondent refused this application on 4 November 2021.
2. The Appellant appealed this decision 5 December 2021 and his appeal came before Judge of the First-tier Tribunal Frantzis (hereinafter referred to as the FTTJ) on 21 September 2022 who dismissed the Appellant's appeal in a decision promulgated on 6 October 2022.
3. Upper Tribunal Judge Sheridan granted permission to appeal on 3 February 2023 for the following reasons:

“ 1. It was arguably procedurally unfair to not adjourn the hearing when both parties sought an adjournment for health reasons.

2. It is also arguable that the judge erred by failing to appreciate that the appellant’s family permit application should have been treated as an application under the Immigration (European Economic Area) Regulations 2016 because arguably all of the conditions in reg. 21 of the 2016 Regulations were satisfied.

3. All grounds can be pursued.”

4. Mr Aziz adopted the grounds of appeal and submitted there had been a material error in law. He submitted that the FTTJ’s failure to adjourn the proceedings in circumstances where the FTTJ had evidence of illness in respect of both the Sponsor and the Respondent’s representative was procedurally unfair and tainted her approach. Mr Aziz further submitted that the FTTJ should have considered the application under the 2016 Regulations as the application had been made prior to 31 December 2020.
5. Mr Tan opposed the application pointing out that firstly, the FTTJ was entitled to consider the history of the proceedings including the fact no bundle had ever been submitted when deciding whether to adjourn the hearing and secondly, following the decision of Siddiqā (other family members: EU exit) Bangladesh [2023] UKUT 00047 (IAC), the FTTJ’s approach was correct as she could only deal with the application that had been made and this had been an application under the EUSS Regulations.
6. Mr Aziz indicated he had not seen the Appellant’s original application form and was then shown the document by Mr Tan. This document had been before the FTTJ. Mr Aziz acknowledged that this document placed him in some difficulty in so far as his second ground was concerned but nevertheless he still submitted there had been procedural unfairness.
7. No anonymity direction was made.

DISCUSSION AND FINDINGS

8. Having heard submissions we indicated there was no material error and that we would give our reasons later in a short decision.
9. Two grounds of appeal had been raised namely procedural unfairness and a failure to deal with the application under the 2016 Regulations. Mr Aziz acknowledged at the hearing that if his second ground had no merit then any possible error in respect of the first ground of appeal would not be material.
10. Relevant to whether the FTTJ should have considered the appeal under the 2016 Regulations is the aforementioned Upper Tribunal decision of Siddiqā in which the Upper Tribunal made it clear that

“1. In the case of an applicant who had selected the option of applying for an EU Settlement Scheme Family Permit on

www.gov.uk and whose documentation did not otherwise refer to having made an application for an EEA Family Permit, the respondent had not made an EEA decision for the purposes of Regulation 2 of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”). Accordingly the First-tier Tribunal was correct to find that it was not obliged to determine the appeal with reference to the 2016 Regulations. ECO v Ahmed and ors (UI-2022-002804-002809) distinguished.

2. In Batool and Ors (other family members: EU exit) [2022] UKUT 219 (IAC), the Upper Tribunal did not accept that Articles 18(1)(e) or (f) of the Withdrawal Agreement meant that the respondent “should have treated one kind of application as an entirely different kind of application”; and that it was not disproportionate under Article 18(1)(r) for the respondent to “determine... applications by reference to what an applicant is specifically asking to be given”. There was no reason or principle why framing the argument by reference to Article 18(1)(o) should lead to a different result. Accordingly, consistently with the approach taken by the Upper Tribunal in Batool, Article 18(1)(o) did not require the respondent to treat the applicant’s application as something that it was not stated to be; or to identify errors in it and then highlight them to her.

3. Annex 2.2 of Appendix EU (Family Permit) enables a decision maker to request further missing information, or interview an applicant prior to the decision being made. The guidance given by the respondent as referred to in Batool at [71] provides “help [to] applicants to prove their eligibility and to avoid any errors or omissions in their applications” for the purposes of Article 18(1)(o). Applicants are provided with “the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omission” under Article 18(1)(o). In accordance with Batool, Article 18(1)(o) did not require the respondent to go as far as identifying such deficiencies, errors or omission for applicants and inviting them to correct them. This is especially so given the “scale of EUSS applications” referred to in Batool at [72]. This provides a good reason for Article 18(1)(o) to be read narrowly to exclude errors or omissions of this sort, and this was the effect of the approach taken by the Upper Tribunal in Batool.”

11. Looking at the paperwork that was before the FTTJ there was nothing to suggest the Appellant had applied under the 2016 Regulations. Before us, Mr Aziz accepted the application had been made under the EUSS Regulations.
12. Following Siddiq we are satisfied there was no requirement on the Respondent to treat the application as anything other than an application under the EUSS Regulations. We find that as the Respondent did not have to consider the appeal under the 2016 Regulations there was no right of appeal to the Tribunal under that Regulation and the FTTJ correctly decided the appeal under the EUSS Regulations.

13. Given our finding that this ground of appeal fails, there can be no argument about procedural unfairness as the Appellant's appeal would have been dismissed regardless of who was in attendance.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on points of law. We uphold the decision.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
29 November 2023