



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

Case Nos: UI-2023-000914, UI-2023-000916  
UI-2023-000915, UI-2023-000917  
UI-2023-000913  
First-tier Tribunal Nos: EA/51226/2022  
EA/51227/2022, EA/51228/2022  
EA/51229/2022, EA/51231/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 10 October 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR SYED MUHAMMAD KASHIF  
MRS SADIA KASHIF SYED  
MR SYED MUHAMMAD SHAZAIN  
MR SYED MUHAMMAD MAAZ  
MR SYED MUHAMMAD ARISH  
(NO ANONYMITY ORDER MADE)**

Respondents

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondents: Mr Z Raza, Counsel, instructed by RMZ Law Offices

**Heard remotely by video link at Field House on 5 September 2023**

**DECISION AND REASONS**

**Introduction**

1. The appellant in this case is the Secretary of State. However, I refer to the parties as they were before the First-tier Tribunal where Mr Kashif, his wife and three children were the appellants.
2. The appellants are citizens of Pakistan currently present in the UK. The first appellant is the brother of a British national (the sponsor). The first appellant has a previous immigration history which is not relevant to this appeal. He initially

arrived in the UK on 30 August 2003 with the second appellant, his wife, joining him in the UK on 12 December 2008. The third and fourth appellants were born in the UK and the fifth appellant was born in Ireland. It was the appellants' case that they were dependent family members on the first appellant's brother, a British national and that they have been part of his household since July 2009. As the judge set out at paragraph [3] of the decision and reasons, this was not a case where credibility was at issue. Judge of the First-tier Tribunal Jepson ("the judge") allowed the appellants' appeals following a hearing on 15 February 2023 with a decision promulgated on 23 February 2023.

3. The appellants had made an application dated 29 December 2020 under the EU Settlement Scheme ("EUSS"), that application being refused by the respondent on 15 August 2022. The judge noted at [15] of the decision and reasons that the respondent in the refusal letter stated that the appellants did not have a "relevant document" as dependent family members of the sponsor and the immigration rules could not be met. The respondent's review dated 2 November 2022 maintained that rule EU14 of the immigration rules had not been satisfied, it being stated that the relevant issue was whether the appellants had evidenced their family relationship with their sponsor, EU14 condition 2.
4. The judge was satisfied in relation to the sponsor's status and his relationship to the appellants, and the issue of dependency. It was the judge's conclusion that the only issue was one of legal interpretation. The judge noted at [20] that the respondent's position 'seemed to be' that the requirements of EU14 of the immigration rules are not met. The judge went on to set out the definition of dependent relative under EU14 of the immigration rules, Appendix EUSS.
5. The judge considered that the case made in the appellants' skeleton argument and the submissions by the appellants' representative at the hearing were different. Although the centre of life issue was discussed, the judge was satisfied that even if it was a contentious matter there was ample evidence to demonstrate that the sponsor did move his life to the Republic of Ireland. The judge went on to note that the skeleton also dealt with the appellants accompanying the sponsor back to the UK which again the judge noted was not challenged nor were any of the dependency issues. The judge was satisfied dependency existed although not for the reasons set out in the witness statement.
6. The judge considered that the skeleton argument argued that the appellant and his family met Regulation 9 of the EEA Regulations 2016 and that the appellant and his family met Appendix EU14 of the Immigration Rules Condition 1 and 2.
7. Appendix EU Immigration Rules (EU14) provides including as follows:

"Persons eligible for limited leave to enter or remain as a relevant EEA citizen or their family member, as a person with a derivative right to reside or with a Zambrano right to reside or as a family member of a qualifying British citizen EU14. The applicant meets the eligibility requirements for limited leave to enter or remain where the Secretary of State is satisfied, including (where applicable) by the required evidence of a family relationship, that, at the date of application, condition 1 or condition 2 set out in the following table is met:

Condition is met where:

.....

2.(a) The applicant is:

- (i) a family member of a qualifying British citizen; or
- (ii) a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen; and

(b) The applicant was, for any period in which they were present in the UK as a family member of a qualifying British citizen relied upon under sub-paragraph (c), lawfully resident by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6 of the EEA Regulations); and

(c) The applicant is not eligible for indefinite leave to enter or remain under paragraph EU12 of this Appendix solely because they have completed a continuous qualifying period in the UK of less than five years."

8. The judge went on to find that (c) of rule 14(2) was made out as the appellants and sponsor returned to the UK in 2019. The judge considered Regulation 9 of the EEA Regulations 2016 (although as considered below, the judge considered the wrong version of Regulation 9) and was satisfied that there was nothing to suggest that the move to Ireland was done with a view to circumventing immigration.
9. The judge at paragraph [22] considered the respondent's arguments that the appellants could not be considered family members of a British citizen under EU14 as dependent relatives as they did not possess a "relevant document". However, it was the judge's finding that EU14 "would seem to be met through the appellants falling with Regulation 9 of the 2016 Regulations. On that basis, labyrinthine though the above discussion and associated provisions are, it seems to me the appeal must succeed".
10. The judge then addressed the appellants' other arguments. The judge considered the history of the appellants' applications including that the appellants spoke of having made an application in 2019 under the EEA Regulations 2016 under the *Surinder Singh* route which was refused due to non-payment of the application fee, with the appellants going on to suggest that this application was resubmitted on 29 December 2020 and refused on 15 August 2022. The judge considered that the first appellant appeared to be arguing that he had applied under the *Surinder Singh* route. There was discussion of the submissions made at the appeal that the entire EUSS scheme was declared unlawful which the judge did not accept. The judge then went on at [27] to discuss **Siddiq (other family members: EU exit) [2023 UKUT 00047]** as follows:

"(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](http://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. The judge was of the view that this addressed the appellants’ argument in relation to considering the application under the Immigration (EEA) Regulations 2016 (“the 2016 Regulations) as opposed to Appendix EU and whether the principle of proportionality under Article 18 of the Withdrawal Agreement would have any bearing. The judge concluded at [28] that the jurisprudence prevented consideration of the 2016 Regulations and that the date of the appellants’ application, before 29 March 2022 and in any event pre-31 December 2020 was not the difficulty but rather that the application was made under Appendix EU and that those provisions must apply. However, the judge relied on his findings that he had found that EU14(b) had been met.

12. The Entry Clearance Officer appealed on the following grounds:

- (1) It was argued that the judge had failed to properly consider the provisions of Appendix EU. The appellants’ applications under Appendix EU were made as dependent relatives of a qualifying British citizen and it was submitted that the appellants could not succeed as the Rule required a “relevant document” as evidence that residence had been facilitated prior to the specified date. As the appellants had not made applications for facilitated

residence prior to the specified date they did not hold a relevant document. It was submitted that the First-tier Tribunal had failed to correctly consider the requirements of Appendix EU in allowing the appeal with the judge making no reference to the appellants' failure to have obtained facilitated residence as extended family members prior to the UK's exit from the EU. It was submitted that the appellants' ability to satisfy the requirements of Regulation 9 of the EEA Regulations 2016 was therefore irrelevant, because their residence was not facilitated prior to the specified date. As the Judge of the First-tier Tribunal had allowed the appeals on the basis of Regulation 9 of the 2016 Regulations being satisfied it was argued that this was a material error of law.

- (2) Reliance was also placed on findings of the Upper Tribunal in **Batool and Others (other family members: EU exit) [2022] UKUT 219 (IAC)** which stated as follows

“An extended family member whose entry and residence was not being facilitated by the United Kingdom before 11 pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.”

## **Rule 24**

13. The appellants before the First-tier Tribunal submitted in their Rule 24 reply, that the First-tier Tribunal had not erred in law and that the judge's conclusions at [22] and [29] were sound. It was argued that the appellants did not require a relevant document to succeed but that what was required was to demonstrate that Regulation 9 of the 2016 Regulations was satisfied. It was argued that there was no challenge to the positive findings made in respect of this. It was further submitted that the appellants satisfied Condition 2 of EU14. The relevant definition is “family member of a qualifying British citizen”. Sub-paragraph (viii) relates to dependent relatives and it is this which then goes on to refer to Regulation 9 of the EEA Regulations 2016.
14. It was submitted that the relevant part of the definition of required evidence of family relationship is (f)(ii), which again does not require the production of a relevant document. It was argued that the respondent had not shown how the immigration rules required the production of a relevant document and it was argued that the respondent was conflating the requirements of that of a family member of an EEA citizen.

## **Discussion**

15. The appellants applied from within the UK, under Appendix EU. It was not disputed that the appellants before the First-tier Tribunal did not meet the eligibility requirements for indefinite leave to remain.
16. The respondent in the refusal letters dated 15 August 2022 noted that the required evidence of family relationship for a dependent relative of a qualifying British citizen, where the applicant does not have a documented right of permanent residence, is:

- a valid registration certificate, family permit or residence card issued by the UK under the EEA Regulations (or the equivalent document or other evidence issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man under the relevant legislation there) and;
  - evidence which satisfies the Secretary of State that the family relationship continues to subsist.
17. The respondent in the refusal letters noted that there was no evidence that the appellants had been issued with a registration certificate, family permit or residence card by the UK under the EEA Regulations as dependent relatives of a qualifying British Citizen who were dependants on that qualifying British citizen, a member of their household or in strict need of their personal care on serious health grounds. The appellants had not provided a relevant document or other evidence issued on this basis.
18. It is important to note that the respondent in the refusal letters, once the respondent was not satisfied that the appellants met the eligibility requirements under EU14 (and EU12), indicated that the respondent had 'not considered any further evidence' within the applications, i.e., there was no substantive consideration.
19. Appendix EU provides the following definition of **family member of a qualifying British citizen** (my emphasis):

*"A person who has satisfied the Secretary of State, including by the required evidence of family relationship, that:*

*(a) they have (or, as the case may be, had) returned to the UK:*

*....*

*(viii) before 2300 GMT on 31 December 2020 (or later where the Secretary of State is satisfied that there are reasonable grounds for the person's failure to meet that deadline), as the **dependent relative** of a qualifying British citizen, or (as the case may be) of their spouse or civil partner as described in sub-paragraph (a)(i) or (a)(ii) above, and that family relationship and (in sub-paragraph (a)(i)(bb) of the entry for 'dependent relative' in this table) the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) existed before the applicant returned to the UK with the qualifying British citizen or (where the Secretary of State is satisfied that there are reasonable grounds for the person's failure to meet the deadline of 2300 GMT on 31 December 2020 for returning to the UK) before 2300 GMT on 31 December 2020, and (in either case) the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) continues to exist at the date of application (or did so for the period of residence in the UK relied upon); and ...*

- (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) or, as the case may be, the conditions in regulation 9(1A)(b), (2), (3) and (4)(a) of the EEA Regulations (as the extended family member (“EFM”) to whom those provisions refer), in either case doing so: ...”*

20. Appendix EU provides the following relevant definition of **dependent relative**:

*The person:*

*..... and*

*(b) **holds a relevant document as the dependent relative** of their sponsoring person for the period of residence relied upon (unless, in the case of a family member of a qualifying British citizen as described in sub-paragraph (a) (viii) of that entry in this table, the Secretary of State is satisfied that there are reasonable grounds for the person’s failure to meet the deadline to which that sub-paragraph refers); for the purposes of this provision, where the person applies for a relevant document (as described in sub-paragraph (a)(i)(aa) or (a) (ii) of that entry in this table) as the dependent relative of their sponsoring person before the specified date and their relevant document is issued on that basis after the specified date (or where the person relies as their relevant document, as described in sub-paragraph (a)(iv) of that entry in this table, on an EU Settlement Scheme Family Permit granted to them under Appendix EU (Family Permit) to these Rules as a ‘dependent relative of a specified relevant person of Northern Ireland’, as defined in Annex 1 to that Appendix), they are deemed to have held the relevant document since immediately before the specified date*

*...”*

21. As highlighted in the grounds for permission to appeal, the First-tier Tribunal made no reference to the appellants’ failure to have obtained facilitated residence prior to the UK’s exit from the EU. Whilst the judge found that the appellants satisfied the requirements of Regulation 9 of the 2016 Regulations (and as already noted in paragraph 7 above, the judge did not consider the correct provisions) that was to put the cart before the horse. The judge’s reasoning, including in paragraph [22] fell into error, as the appellants did not meet the required definition of dependent relatives (as set out above) as they had not applied for or been issued with a relevant document as the dependent relative of a British citizen. The judge failed therefore to apply the requirements of the relevant definitions of ‘family member of a qualifying British citizen’ and ‘dependent relative’ which required the appellants to have obtained facilitated residence.
22. Whilst it is correct that the definition of family member of a qualifying British citizen (b) refers to those family members of a qualifying British citizen satisfying the requirements of Regulation 9 of the EEA Regulations 2016, (a)(viii) of the definition, as set out above, requires that an individual has satisfied the Secretary of State including by the required evidence of family relationship that they had returned to the UK ‘before 2300 GMT on 31 December 2020’ as ‘the dependent relative of a qualifying British citizen’.

23. Mr Raza sought to rely on a stated exception in the case of a family member of a qualifying British citizen as described in sub-paragraph a(viii) of that entry, where the Secretary of State is satisfied that there are reasonable grounds for the person's failure to meet the deadline to which that sub-paragraph refers, that exception only applies in a case where the dependent relative had not met the 31 December 2020 deadline which is not applicable to this appeal.
24. Although the appellants before the First-tier Tribunal were in the UK before 2300 on 31 December 2020, they were not present as 'dependent relatives' as they did not hold a relevant document as the dependent relative for the period of residence relied on and did not therefore have the required evidence of family relationship.
25. Mr Raza also sought to rely on the definition of 'required evidence of family relationship' subparagraph f(ii) in support of his submission that a relevant document is not required. However, the full definition of required evidence of family relationship for a dependent relative is as follows:
- '(f) a dependent relative:*
- (i) (where sub-paragraph (f)(ii) below does not apply) a relevant document as the dependent relative of their sponsoring person (in the entry for 'dependent relative' in this table) and, unless this confirms the right of permanent residence in the UK under regulation 15 of the EEA Regulations (or the right of permanent residence in the Islands through the application there of section 7(1) of the Immigration Act 1988 (as it had effect before it was repealed) or under the Immigration (European Economic Area) Regulations of the Isle of Man), evidence which satisfies the Secretary of State that the relationship and the dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) continue to exist at the date of application (or did so for the period of residence relied upon); or*
- (ii) (in the case of a family member of a qualifying British citizen as described in sub-paragraph (a)(viii) of that entry in this table, where the Secretary of State is satisfied that there are reasonable grounds for the person's failure to meet the deadline to which that sub-paragraph refers) evidence which satisfies the Secretary of State that the relationship and the dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) existed before the specified date and continue to exist at the date of application (or did so for the period of residence relied upon)*
26. The definitions establish that dependent relatives require a relevant document. It is only in the specific exception described, where the family member of a qualifying British citizen has satisfied the Secretary of State of reasonable grounds for failure to meet the 31 December deadline, that a relevant document is not required. That was not the appellants' case, either in their applications to the respondent or before the First-tier Tribunal. Mr Raza was attempting to 'save' the judge's decision with reference to arguments not before the First-tier Tribunal and which in any event, it has not been demonstrated apply in these appeals.



27. Whilst Mr Raza correctly identified that **Batool** relates to extended family members of EEA citizens, that does not assist the appellants in this case as the judge failed to properly apply the requirements of Appendix EU in relation to the requirement for a relevant document. The judge gave adequate reasons for rejecting those additional arguments which were before him, both that the EUSS was unlawful or that the appeals should be considered under the EEA Regulations, as opposed to under EUSS.
28. The crux of the matter is that the appellants had not made applications for facilitated residence prior to the specified date and did not hold a relevant document in order to satisfy the requirements of Appendix EU. The judge fell into material error in his consideration of this issue and failed to apply the relevant provisions of Appendix EU. The appeals of the appellants before the First-tier Tribunal fall to be dismissed on this ground.
29. In addition, although not expressly argued before me by the Secretary of State and I have not therefore taken into account in my consideration of the error of law, although arguably it was before me as the Secretary of State's grounds of appeal argued that the judge failed to properly consider the provisions of Appendix EU, having found an error of law for the reasons given above, it is an obvious point that the appellants could not meet the requirements of paragraph 9(2)(d) of the Immigration (European Economic Area) Regulations 2016. The judge having erroneously set out and applied an earlier version of the 2016 Regulations, failed to consider paragraph 9(2)(d). As the appellants do not meet this provision, they therefore do not meet the requirements of Appendix EU14 (2) (b).
30. Paragraph 9(2)(d) (part of the list of conditions which must be satisfied) provides that either
- (i) F was a family member of BC during all or part of their joint residence in the EEA State;*
  - (ii) F was an EFM of BC during all or part of their joint residence in the EEA State, during which time F was lawfully resident in the EEA State; or*
  - (iii) EFM was an EFM of BC during all or part of their joint residence in the EEA State, during which time EFM was lawfully resident in the EEA State;*
31. There was no evidence that the appellants who were applying as extended members (EFM) were lawfully resident in the EEA State (Ireland) and the judge notes that the appellants' applications in Ireland had been refused and were under appeal. Although the Rule 24 argued that there was no challenge to the judge's positive findings in respect of Regulation 9, that is argued that the judge failed to properly consider the provisions of Appendix EU. However, even if I am wrong in these findings, or wrong in considering this as an obvious point, the appeals of the appellants before the First-tier Tribunal cannot succeed for the reasons summarised at paragraph 27 above.
32. The grounds of appeal disclose an error of law. The decision of the First-tier Tribunal materially erred in law and is set aside. I substitute the following decision: The appeals are dismissed.

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**M M Hutchinson**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 September 2023**