



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002225
UI-2023-002226
UI-2023-002227
UI-2023-002228
UI-2023-002229
UI-2023-002230

First-tier Tribunal No:
EA/10969/2021 EA/10968/2021
EA/10966/2021 EA/05987/2021
EA/10962/2021 EA/06143/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MR RIAZ HUSSAIN
MRS SOBIA HUSSAIN
MR MUHAMMAD ZAKARIYA HUSSAIN ISMAIL
MISS MUHAMMAD AMINA HUSSAIN ISMAIL
MISS KHIZRA HUSSAIN ISMAIL
MR MUHAMMAD ABNU HURAIRA HUSSAIN ISMAIL
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Brown instructed by Latitude Law.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 2 November 2023

DECISION AND REASONS

1. The appellants' appeal with permission a decision of First-tier Tribunal Judge Mather ('the Judge'), promulgated following a hearing at Manchester on 6 March 2023, in which the Judge dismissed the appellants' appeals against the refusal of their applications for EUSS family permits.
2. The Judge notes that the appellants cases are that they are members of their Sponsors household [6].
3. The Sponsor, Sadia Sarfaz, is the niece of the first appellant and the holder of an Italian passport.

4. The Judge's findings are set out from [20] of the decision of the challenge.
5. The Judge did not accept the Sponsor or appellants are credible witnesses [21] for the reasons set out at [22 - 26].
6. At [27 - 28] the Judge writes:
 27. I have reminded myself of the case of Sohrab and others. I do not accept there is any sense in these applications that the Appellants' current residence is the Sponsor's home with her at the head of the household, rather than a shared home with others contributing. Indeed, given the vague and inconsistent evidence given, including that the Sponsor I am not persuaded that the circumstances of the Sponsor Appellants are those as claimed. I am not persuaded on the evidence submitted that the Sponsor was in receipt of the income as claimed or that she used these monies to pay the rent on the Appellants current home in Pakistan.
 28. I am satisfied that the Sponsor always intended to follow her mother and sister to the UK and the arrangement to live with the Appellants in Pakistan was a temporary one. Furthermore, I am not persuaded that this arrangement was not entered into for the purpose of providing a platform for the Appellants' applications. I do not accept that she was the head of the household as claimed. I do not accept that the Appellants have discharged the burden of proof is required and I dismissed the appeals.
7. The appellants sought permission to appeal asserting at Ground 1, a procedural impropriety. The appellant's case was based on their membership of the Sponsors household in Pakistan with all parties, including the Sponsor, continuing to live in the same household yet the appeal was refused on the grounds of dependency. It is argued the refusal letter had no bearing on the issues in the case and no opinion had been expressed by the decision maker in relation to whether the appellants were members of the Sponsors household. The grounds assert the Judge was in breach of the Surendran guidelines, especially as the appellants were not on notice of any of the issues taken against them by the Judge which arose for the first time in the decision.
8. Ground 2 asserts a material mistake of fact in that the Sponsor lives in Pakistan with the appellants and is part of the household there. Since the grant of status to her under the EUSS in 2021 she had spent less than one month in the UK for visits, including for the purpose of giving evidence before the Judge. It is stated that by the date of the hearing the Sponsor spent eight days in the UK that year, no days in the UK in 2022, less than a month in the UK in 2021. It is argued the Judge acted under a mistake as to where the Sponsor was living during the period dealt with in the evidence.
9. Ground 3 asserts the Judge has taken account of immaterial matters, by reference the findings at [25] of the decision under challenge.
10. Ground 4 asserts a failure to give adequate reason/irrationality at [23] on the basis the phrase "multiple times" is similar to "3 to 4 times" meaning no suggested inconsistency existed.
11. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Reeds, on 28 July 2023, the operative part of the grant being in the following terms:
 2. The basis of their applications were as members of the sponsor's household in Pakistan and that all parties, including the sponsor had continued to live as such a household.
 3. There are 4 grounds of challenge. Having considered the grounds in the context of the decision and the nature of the appeal, it is arguable as the grounds contend that as there had been no issues raised as concerning their membership of the sponsor's household, if the FtTJ was going to decide the appeal on points that had not been

previously raised or ventilated, they arguably should have been raised at the hearing. The grounds are also arguable as to whether the sponsor was in fact living in the UK in light of the calculated days of residence. As to the other grounds, the FtTJ made findings of fact based on the oral evidence of the sponsor and even if were not relevant to the issue of household membership, may be seen as general credibility points. However I do not restrict the grant of permission.

4. All grounds are arguable. Permission is granted.

Discussion and analysis

12. I am grateful to the advocates in this appeal for the constructive manner in which they approach the issues during the course of the hearing.
13. I agree with Mr Brown's assessment that the difficulties in this appeal arose from the content of the Entry Clearance Officer's (ECO) refusal. The application made by the appellants was not on the basis of dependency but on the basis of being members of the EU national sponsors household in Pakistan. Not only does the refusal not appear to specifically address this issue it appears that the Judge's findings seem to be a hybrid of assessment in relation to the dependency point not taken and possibly touching upon the issue of the same household.
14. A person who makes a valid application is entitled under the procedure directive to have a proper decision made upon that application. In this case the application for a residence card, made on the basis of being a member of the EU national sponsors household has not been properly determined and is still outstanding.
15. The original grounds of appeal against the decision of the ECO assert the decision is unlawful as it breaches the appellants rights under the EU Treaties in respect of entry to and residence in the UK. I find that properly reflects the reality of the situation which was not properly considered by the Judge.
16. I find in the circumstances it is appropriate to find the Judge has erred in law in a manner material to the decision to dismiss the appeal for the reasons set out in the grounds seeking permission to appeal. I set the decision of the Judge aside.
17. I substitute a decision to allow the appeal to the extent it is remitted to the ECO to enable a lawful decision to be made upon the application made by the appellants' who claim to be entitled to a Residence Card/Family Permit on the basis of being members of the EU national Sponsor's household in Pakistan.

Notice of Decision

19. I find the First-tier Tribunal has materially erred in law. I set the decision aside. I substitute a decision to allow the appeal to the extent it is remitted to the Entry Clearance Officer to enable a lawful decision to be made upon the extant application.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 November 2023