



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004882
First-tier Tribunal No:
EA/07380/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Maria Rehman
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 15 April 2024

DECISION AND REASONS

Introduction

1. This appeal concerns a decision taken by an Entry Clearance Officer on 20 February 2021 refusing to grant the appellant a Family Permit under the European Union Settlement Scheme.
2. The Secretary of State was earlier granted permission to appeal the decision of First-tier Tribunal Judge Wyman allowing the appellant's appeal, which was promulgated on 1 July 2022. Following an error of law hearing which took place on 14 February 2023, that decision was set aside with no preserved findings. The appeal was retained in the Upper Tribunal for remaking.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Background

4. On 17 December 2020, the appellant made an application for an EU Settlement Scheme Family Permit. That application was refused on 20 February 2021, and this is the decision which is under appeal. In essence, the reason for refusal stated that the appellant had only provided evidence to show that she was, as the sponsor's sister-in-law, an extended family member and not a family member and as such she did not meet the definition of family member as set out in Appendix EU (Family Permit). By way of background, the appellant's two children applied for were refused Family Permits under regulation 8 of the EEA Regulations 2016. The First-tier Tribunal judge allowed all three appeals, albeit the decisions relating to the appellant's children were not challenged.
5. Following the error of law hearing, this matter was stayed pending the outcome of the appeal in *Celik* (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC).
6. On 12 October 2023, Upper Tribunal Judge Perkins made the following directions, the appeal in *Celik* having been decided by the Court of Appeal by that stage (*Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921).

3. It is my provisional view that the Appellant's appeal must now be dismissed.
4. If, having properly applied the judgement in *Celik*, the Appellant accepts the appeal cannot succeed, then the Appellant is invited to withdraw her appeal by sending to the Upper Tribunal a written notice of withdrawal pursuant to rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 within 21 days of the date these directions are sent.
5. If the Appellant considers there are other arguable grounds upon which she could succeed in their appeal to the Upper Tribunal, then she must provide the Upper Tribunal with written Appeal Number: UI-2022-004882 2 amended grounds of appeal within 21 days of the date these directions are sent. Thereafter the appeal will be listed for hearing.
6. In the absence of a substantive response to these directions within 21 days of the date they are sent, or if for any other reason the Tribunal considers it appropriate, the appeal will be listed for disposal on notice to the parties shortly after the expiry of the 21 days.
7. The Upper Tribunal served those directions on the appellant's representatives, Sentinel Solicitors, by email on 14 November 2023. No response was received on behalf of the appellant. Therefore, this matter was listed for a remaking hearing for 15 April 2024. The notice of hearing was served on both representatives by email on 21 March 2024.

Remaking hearing

8. There was no attendance on behalf of the appellant. It was notable that there had been no communication from Sentinel Solicitors since the error of law hearing and that there had been no response to Judge Perkins directions. The electronic file indicated that the notice of hearing had been served on all parties. Furthermore, there was no explanation put forward for the lack of attendance by the appellant's solicitors.

9. Considering all matters including the previous concessions made by the appellant's counsel before both the First-tier Tribunal and Upper Tribunal as to the shortcomings in the appellant's case; the lack of an explanation for non-appearance of a representative and the likelihood that an adjournment would not result in attendance on a future occasion, I decided that to proceed with the hearing in the absence of a representative would not amount to any unfairness to the appellant.
10. Thereafter, I invited brief submissions from Ms Isherwood who urged me to dismiss the appeal, applying *Siddiq* [2024] EWCA Civ 248.
11. At the end of the hearing, I dismissed the appellant's appeal for reasons set out briefly below.

Decision on remaking

12. In the absence of any submissions on behalf of the appellant, I have considered the arguments made on her behalf at the First-tier Tribunal and Upper Tribunal hearings.
13. At the First-tier Tribunal, counsel for the appellant, Mr Collins accepted that it was not open to the appellant to make an article 8 ECHR application; that she could not meet the Immigration Rules; that the Withdrawal Agreement had no application to her case and the appellant did not come within the Citizens Directive. Before the Upper Tribunal, Mr Collins agreed that the judge had erred in allowing the appellant's appeal without reference to any legal framework.
14. Submissions made on the appellant's behalf set out at [48-51] of the First-tier Tribunal decision suggest that the respondent ought to have contacted the appellant to request further information about her application under the EUSS. Reference was also made to a positive obligation by the respondent to facilitate the appellant's entry under the Immigration (European Economic Area) Regulations 2016, it being said that she was entitled to a permit under the Regulations.
15. Ultimately, the strongest point made on the appellant's behalf was that she had made the wrong type of family permit application. As correctly pointed out by Ms Isherwood, in *Siddiq*, the Court of Appeal confirmed that those who had made such an error could not benefit from the EUSS or the Withdrawal Agreement. The Court of Appeal concluded that the claimant in that case, had not sought facilitation of entry because she had not made an application under the 2016 Regulations and the respondent was required to do no more than assess the application which had been made under the EUSS.
16. The appellant's case is analogous to that of the claimant in *Siddiq*, in that there was no reference to the 2016 Regulations in the application she made for a Family Permit under the EUSS. Mr Collins previously conceded that Article 18 of the Withdrawal Agreement simply did not apply in the circumstances of the appellant's case.
17. Mr Collins' approach was confirmed by the Court in *Siddiq*, at [80].

'...the provisions of article 18, when properly interpreted, apply to extended family members whose entry has been facilitated under the EEA family permit scheme. Once that step under domestic law and the 2016 Regulations has been achieved, the

successful applicant can apply for residence pursuant to article 18 of the Withdrawal Agreement under the relevant UK scheme.'

18. Accordingly, as the appellant made no application under the 2016 Regulations before 31 December 2000, she is not entitled to rely upon those regulations in her appeal. Furthermore, no facilitation of her entry had taken place under the EEA Regulations which would enable her to benefit from the application of the Withdrawal Agreement.
19. The appeal under the Immigration Citizens' Rights (EU Exit) Regulations 2020, is dismissed.

Decision

The appeal is dismissed.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 April 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email

