



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006729

First-tier Tribunal Nos: EA/52174/2021
IA/13267/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MISS SITARA SHARIFI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms Arif, Home Office Presenting Officer

Heard at Field House on 13 September 2024

Order Regarding Anonymity

No anonymity order was made.

DECISION AND REASONS

1. This is an appeal against the decision of Judge Malik on 12 September 2022, who decided that the appellant did not qualify as an extended family member of an EEA National under regulation 8 of the Immigration (European Economic Area) Regulations 2016. This was on the basis that her essential living costs were not met by the sponsor and therefore the judge dismissed the appeal.
2. The appellant appealed against that decision on 13 July 2022. On 22 November 2022 First-tier Tribunal Judge Parkes gave permission to appeal, indicating that the judge arguably erred in finding that, although the appellant was dependent on the sponsor for her living costs, it was not feasible for the sponsor to continue

to provide for the appellant financially. That issue had not been raised in the refusal letter. Indeed, maintenance and accommodation had been accepted.

3. Judge Parkes considered it to be at least arguable that the judge had bound his or her hands by indicating that the appellant was dependent on the sponsor in paragraph 23. Therefore, it did not appear open to the judge to reach the opposite conclusion later in the decision where it was concluded that the sponsor was not capable of supporting the appellant. In the circumstances, Judge Parkes gave permission to appeal to the Upper Tribunal.
4. On behalf of the respondent, Ms Arif conceded that there had been an error of law in that the judge had appeared to decide the appeal on a basis not advanced by the respondent, which had not therefore formed part of the reasons for refusal. Accordingly, she conceded that it was proper to set aside the decision of the First-tier Tribunal and allow this appeal.
5. I am satisfied for the reasons given by Ms Arif that there is a material error of law which justifies the setting aside of the decision and that the appeal should be allowed. In particular, it was an error of law to decide the case on a basis which had not been raised, indeed the respondent had accepted that the appellant would be maintained and accommodated by the sponsor.
6. Accordingly, the appellant's appeal is allowed and the decision of the FTT is set aside.



8th October 2024

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber