IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003201
UI-2024-003202
First-tier Tribunal No: EA/00229/2024
EA/00228/2014

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 November 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NT
MH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance.
For the Respondent: Miss Newton, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 5 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellants' appeal with permission a decision of First-tier Tribunal Judge Jepson ('the Judge'), promulgated on 16 May 2024, in which the Judge dismissed

their appeals against the refusal of their applications for settle/pre-settled status dated 22 December 2023.

2. The Appellants are citizens of Pakistan born in 1985 and 2008 respectively.
3. The Judge notes nobody attending on the Appellants' behalf even though it is found notice of hearing had been sent to their nominated address on 14 March 2024.
4. That also occurred before me today when, despite valid service of the notice specifying the date, time, and venue of this hearing having been sent to the nominated address for communication and service of documents, there was no attendance by anybody on the Appellants behalf. As I am satisfied there has been service in accordance with the Rules, and in the absence of any explanation, application to adjourn which had been granted, or any other reason, I am satisfied it is in the interests of fairness, justice, and the overriding objective to proceed to determine the appeal in the Appellants' absence.
5. The Judge outlines the Appellant's case between [11 – 14]. The sponsor TIMG is said to be the husband of NT and the father of MH. He holds a Spanish passport.
6. The Judge notes the refusal raised one issue, namely that there was insufficient evidence to show the sponsor met the definition of a 'relevant sponsor' within Appendix EU, as there was nothing to show the sponsor held status under the EUSS or that he has been in the UK for a continuous qualifying period since 31 December 2020.
7. The Judge's findings are set out from [17] referring to the lack of evidence to show the sponsor had been in the UK for the required period or anything to show he held status under Appendix EU. The Judge finds the question of undue harshness raised in the grounds in relation to impact the removal could not be considered as the application and subsequent appeal were against the refusal of an application for settle/pre-settled status.
8. The Appellants' sought permission to appeal which was refused by another Judge of the First-tier Tribunal on 24 June 2024 and renewed to the Upper Tribunal.
9. Permission to appeal was granted by Upper Tribunal Judge Meah on 14 August 2024 the operative part of the grant being the following terms:

    1. The Appellants seek permission to appeal, in time, against the decision of First-tier Tribunal Judge Jepson, who dismissed the appeals against refusals of a applications under the EU Settlement Scheme, following a hearing which took place on 03 May 2024, in a decision promulgated on 16 May 2024.

    2. The Appellants' aver in their grounds, inter alia, that they were unaware that their appeals were listed to be heard on 03 May 2024, as they did not receive the notice/s of hearing. They claim they called the First-tier tribunal hearing venue on 08 May 2024, at which point they discovered their appeals had already been heard in their absence with decisions reserved. They further claim they emailed the tribunal immediately after establishing this, requesting their appeals should not be decided "and to be able to attend the appeal…". However, no further action was taken by the First-tier tribunal and the Judge who heard the appeals proceeded to promulgate his joint decision in both matters on 16 May 2024.

    3. It appears that the appellants' did not receive the notices informing them of the date of hearing. There is no explanation as to why this was the case i.e. a change of correspondence or email address. However, it appears they paid the full fee for an oral hearing and did not opt to have their appeals decided on the papers.

    4. In the circumstances, and in taking note that the Appellants' are litigants in person, and the burden of proof lies ultimately with them, I am prepared to afford them the benefit of doubt that they were genuinely unaware of the

hearing date for their appeals, and that they were attempting to engage with the appeal process.

5. Therefore, in considering the overriding objective under Rule 2 of The Tribunal Procedure (Upper Tribunal) Rules 2008, it is arguably in the interests of justice to grant permission to appeal as the appellants' have not had an opportunity to have the oral hearings they had requested. It appears that this was for reasons beyond their control or knowledge.

6. Consequently, depending on Respondent's response to this grant of permission, and the premise upon which it is made, the parties may wish to consider whether to dispose of this matter by consent pursuant to Rule 39 of The Tribunal Procedure (Upper Tribunal) Rules 2008, so that disposal may be without a hearing with a view to remittal to the First-tier Tribunal for both appeals to be heard de-novo.

7. The Respondent is accordingly directed to file a response under rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, within 14 days of this decision setting out her position in response to paragraph 6 above.

10. The Secretary of State in a Rule 24 reply, dated 5 September 2024, filed in response to direction (7) writes:

1. The respondent opposes the appellant's application for permission to appeal.

2. Permission was granted on the following basis namely that (i) It is arguable that the appellants did not receive the notice of hearings.

3. The grant of permission is acknowledged, and it is assumed that the Judge in granting permission checked the Tribunal file to when and where the notices where sent, on the appeal form the appellants do have an address and an email address.

4. Irrespective of the grant of permission these appeals are opposed because the grounds challenging an EUSS decision are solely focused on Article 8 ECHR and Section 55 and no challenge to the EUSS decision.

5. In accordance with Dani (non-removal human rights submissions) Albania [2023] UKUT 293 (IAC) (02 November 2023) (bailii.org) a refusal under the EUSS is not without more a "human rights claim" under Section 113(1) of the 2002 Act. Therefore, it is not open to challenge the decision on the basis the appellants have put forward. At paragraph 30 it states:

"The permitted grounds of appeal under the 2020 Regulations define and thereby limit the tribunal's jurisdiction. There is no general human rights-based ground of appeal under the 2020 Regulations, and there is no basis to adopt an expansionist approach to the tribunal's jurisdiction (and see below in relation to section 7(1)(b) of the Human Rights Act). It follows that the non-applicability of the "new matter" regime to non-removal human rights claims does not, contrary to Mr Toal's submissions, permit such broader human rights claims to be entertained by the tribunal."

6. It is for this reason the determination does not contain a material error in law.

Discussion and analysis

11. The application for permission to appeal claims the Appellants were completely unaware that the appeal was going to be heard on 3 May 2024. They also set out reasons for challenging the decision based on Article 8 ECHR and section 55 in relation to the best interests of the children.
12. A skeleton argument filed for the purposes of the error of law hearing contains further detail referring to a request for an adjournment having been made on 8 May 2024 to which the Tribunal responded to on 9 May 2024 at which point the

Appellants claim they discovered the hearing date of 3 May had already passed. At [6 – 7] of the skeleton argument it is written:

> 6. Appellants believe it could have been a misunderstanding during the phone call with tribunal in April 2024 and also due to the email going to junk mail which appellant was not able to read on time. Appellant further requests tribunal that they only became aware of hearing dated third of May on 9 of May 2024. The appellant requests the Tribunal that although the hearing has been heard by the Judge in the appellant's absence, however, a decision has not been made yet. As mentioned before; despite emailing the tribunal to not decide and to be able to attend the appeal on time, the judge promulgated the decision on 16th of May 2024.
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> 7. As the judge already knew about the entire situation it would have been better if they had considered the circumstances and not allowed the decision to be promulgated. Therefore, the appellant humbly requests the matter as adjournment of hearing so that the appellant may get the opportunity to attend the appeal hearing and present the matter from their side. The appellant requests the Tribunal to consider our exceptional circumstances and to issue another notice of hearing for the sake of fair trial and justice before making any decision on the appeal.

13. The remaining parts of the skeleton argument repeat points relevant to Article 8 ECHR and section 55, which were not matters before the Judge.
14. The balance of the evidence shown the Appellants' were sent lawful notice of the hearing which they claim went to the junk folder of their email. They must have been aware a notice was forthcoming as evidenced by the call to the Tribunal in April 2024. The reference to a misunderstanding is on the Appellants' behalf. The Judge's finding that there had been valid service of the notice is a finding within the range of those available to the Judge on the evidence. It is not unreasonable to assume that as there were aware a hearing was to be listed the Appellants would ensure that the junk file of their email was properly checked to ensure that an email had not gone there.
15. In any event, there is only one outcome of this appeal. The refusal of the application was on very limited grounds relating to the status of the sponsor. The application was limited to seeking leave pursuant to Appendix EU of the Immigration Rules not pursuant to Article 8 ECHR. No application for this to be raised was made before the Judge to which the Secretary of State had consented.
16. The Grounds seeking permission to appeal, as noted in the Rule 24 response, do not address this issue. They repeat the Appellants' arguments pursuant to Article 8 ECHR and section 55 concerning the best interests of the children, but they are not relevant issues.
17. As they have failed to establish the Judge's rejection of their applications under Appendix EU is infected by material legal error of law, as they have not addressed the issue concerning the sponsor status, this appeal is bound to fail.
18. If the Appellants' wish to remain in the United Kingdom they should seek advice about whether they have a case pursuant to Article 8 ECHR on the basis of their family and private life and, if so, to make an application without delay which can be considered by the Secretary of State.

Notice of Decision

19. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 November 2024