



**Upper Tribunal
(Immigration and
Asylum Chamber)**

**Appeal Numbers EA/03292/2021 [UI-2022-000182]
EA/03294/2021 [UI-2022-000183]**

THE IMMIGRATION ACTS

**Heard at Manchester
On the 8 July 2022**

**Decision and Reasons
Promulgated
On the 07 September 2022**

Before

**Upper Tribunal Judge Lane
Deputy Upper Tribunal Judge Sills**

Between

**SHAKEELA BEGUM
&
SAIF ULLAH
(Anonymity Direction Not Made)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

ERROR OF LAW DECISION

Representation:

For the Appellant: Mr Chowdhury

For the Respondent: Mr McVeety

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Introduction

1. The Appellants appeal against the determination of First-Tier Tribunal Judge Meyler (the Judge) dated 17 January 2022, dismissing their appeal against the refusal of their applications for EEA Family Permits.

Factual Background

2. The Judge summarised the factual background as follows:

2. The appellants are nationals of Pakistan, born on 8 February 1971 and 7 July 2013 (respectively). They are the sister and nephew of the sponsor, Mr Mohammad Rafiq Mughal; a Spanish national exercising Treaty rights in the UK..

The appellants' claim

6. The appellants claim that they are the sister and nephew of the sponsor, an EU national exercising Treaty rights in the UK, and are dependent on him since the first appellant's divorce in May 2014. The sponsor stated in his witness statement he has been sending money directly to the first appellant since 2018, after his wife came over to live with him in Pakistan. Prior to that, he sent money for his wife as well as his sister and nephew. The sponsor states that the first appellant is unemployed and his nephew is a child at school. It is claimed that the appellants rely on the financial support sent by the sponsor for their essential living needs.

3. The Respondent refused the application on 9 April 2021 on the basis that the Appellants had not established that they were dependent upon their EEA national Sponsor (S).
4. The appeal then came before the Judge on 24 November 2021. In dismissing the appeal, the Judge noted that the First Appellant had failed to submit her bank statements in support of her appeal and failed to provide a satisfactory explanation for this. Hence, the First Appellant had failed to provide full and frank disclosure. The Judge then found that the First Appellant had deceived both a court in Pakistan and the Second Appellant's father as to her intention to move to the UK permanently. The Judge went on to state as follows about the Second Appellant's father at para 29:

However I further find that for the father to have appeared in support of the application [for the First Appellant to be appointed guardian of the Second Appellant], it is likely that he has a supportive presence in the life of the child and may be contributing towards his maintenance or even paying the first appellant alimony. In light of the first appellant's refusal to

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produce her bank statements, I feel unable to discard those possibilities and the possibility that the first appellant may also be working, despite what the sponsor's understanding might be.

5. The Judge then noted the Appellants' failure to disclose that S had previously sponsored individuals to come to the UK before concluding that the Appellants had not shown on the balance of probabilities that they required the support received from S to meet their essential living needs.
6. A applied for permission to appeal arguing *inter alia* that the Judge had acted unfairly as follows.

11. The point whether the 1st appellant's ex-husband had any contact with their son, or whether he was contributing towards his maintenance or paying the 1st appellant alimony were never put the EEA sponsor. No opportunity was given to the EEA sponsor to explain if it was thought to be necessary by the FTT, the interests of fairness dictate that the EEA sponsor ought to have afforded such an opportunity. In such circumstances it is unfair to hold such matters against the appellants and the EEA sponsor and such an approach by the FTT was unreasonable, unlawful and unfair.

7. Permission to appeal was granted by Judge Swaney on 1 March 2022. Judge Swaney considered it arguable that the Judge had erred in the assessment of credibility based on the failure to provide bank statements without considering all the evidence in the round. Further, the Judge had arguably erred by speculating as to other possible sources of income such as alimony without reference to the evidence. Finally, the Judge had arguably applied the wrong test for dependency.
8. The Respondent did not file a Rule 24 response.

The Hearing

9. At the hearing, Mr McVeety for the Respondent did not seek to defend the decision and accepted that there were flaws in the decision and reasons. In particular, Mr McVeety accepted that the decision and reasons were flawed as neither the Respondent nor the Judge had raised the issue of funds being received by the Appellants from the Second Appellant's father at the hearing.

Findings

10. In view of Mr McVeety's acceptance that there were flaws in the decision under appeal, the Tribunal is satisfied that the making of the decision and reasons involved the making of an error of law such that it must be set aside.

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11. The Tribunal is satisfied that the Judge acted in a procedurally unfair manner. The Judge found that it is likely that the Second Appellant's father has a supportive presence in the life of the child and may be contributing towards his maintenance or even paying the first appellant alimony. While this was not the only reason given by the Judge for finding that the Appellants had not established that they were dependent upon S, it was nonetheless a significant reason. The parties agree that the suggestion that the father was contributing to the Second Appellant's maintenance or paying alimony to the First Appellant was not raised at the hearing. This issue is not raised in the decision letter either. The Tribunal is therefore satisfied that the Judge acted in a procedurally unfair way by taking this point against the Appellant without it being raised either in the decision under appeal or at the appeal hearing. This amounts to an error of law. The Tribunal is satisfied that the decision and reasons should be set aside as a result of this error of law.

12. The Tribunal has considered whether to re-make the decision or remit the case to the First-tier Tribunal. Both parties submitted that it was appropriate for the appeal to be remitted in view of the fact that a fresh hearing was required with no findings preserved. We have had regard to para 7 of the 2014 Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal. As there are no preserved findings, it is appropriate to remit the appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal sitting at Manchester to be considered afresh by a judge other than First-tier Tribunal Judge Meyler.

Signed

Date 8 July



2022

Deputy Upper Tribunal Judge Sills

Listing Directions: list at Manchester First-tier Tribunal: first available date after 15 August 2022: not Judge Meyler: 2 hours:

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