



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-000494**  
**First-tier Tribunal No:**  
**EA/05591/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 17 May 20223**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**Entry Clearance Officer**

Appellant

**and**

**Mr Muhammad Amin**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Basra, Senior Presenting Officer  
For the Respondent: Mr Garrod, Counsel instructed by LawGate Solicitors

**Heard at Field House on 4 May 2023**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Zahed promulgated on 17 January 2023 allowing Mr Amin's appeal against the decision of the Entry Clearance Officer dated 2 February 2022 to refuse him a family permit under the EU Settlement Scheme. The original appeal was in respect of both Mr Amin and his wife Mrs Amin, however Mrs Amin's appeal was allowed and the Secretary of State does not seek to challenge that decision.

**Background**

2. Mr Amin is a national of Pakistan born on 9 May 1971. On 20 September 2021 he applied for an EU Settlement Scheme (EUSS) family permit under Appendix EU

(Family Permit) of the Immigration Rules on the basis that he was a “family member of a relevant EEA citizen”. The EEA citizen in question was the appellant’s wife’s father Mr Iftikhar Ahmed Nazzir, a Spanish national. The application was refused on 2 February 2022. It was asserted by the Entry Clearance Officer that Mr Amin does not meet the requirement of Appendix EU (Family Permit) because he is not a “family member” within the definition of a “family member of a relevant EEA citizen”.

### **The judge’s decision**

3. Before the judge it was argued that Mr Amin had applied for a family permit along with his wife and six children on 31 December 2020 prior to the end of the transition period.
4. The judge found that Mr Amin is the EEA sponsor’s son-in-law and is therefore not a “family member” as defined by Appendix EU (Family Permit). He found that Mr Amin’s appeal could not succeed on the ground that the decision was not in accordance with the residence scheme immigration rules.
5. The judge turned to whether the appeal could be allowed under the Withdrawal Agreement. The judge accepted that Mr Amin applied for a family permit with his wife and children on 31 December 2020. At [24] the judge accepted that the appellant had made “an application for facilitation” before 11pm on 31 December 2020.
6. The judge found that Mr Amin had applied with his entire family to facilitate entry into the United Kingdom at a time when he would have been considered as an “extended family member” under the EEA Regulations. The judge at [23] said:

“I find that on the evidence before me, that he would have succeeded in showing dependency at the date of application and was dependent on the EEA sponsor at the date of her application and was thus entitled to a family permit”.
7. The judge allowed Mr Amin’s appeal on the basis that in line with Celik(EU Exit, marriage, human rights) [2022] UKUT 002200 he had applied for his facilitation before 11pm on 31 December 202; he was dependent on his EEA sponsor on that date and that it is “proportionate” and “fair” that he be granted a family permit in line with his wife and children.

### **Grounds of appeal to the Upper Tribunal**

#### **Ground 1 - The judge erred by making a material misdirection in law on a material matter:**

- (a) The judge materially erred by allowing Mr Amin’s appeal with reference to the Withdrawal Agreement because the appellant does not fall within the “personal scope” of the Withdrawal Agreement.
- (b) The judge erroneously finds that Mr Amin applied for facilitated residence prior to the specified date. This finding is erroneous as the appeal is made against the refusal of an application submitted on 20 September 2021, which is after the “specified date” when the UK left the EU.

- (c) Additionally, the application was made for settlement under the Appendix EU (Family Permit) of the Immigration Rules. It was not made for facilitated residence under the EEA Regulations. The judge has therefore materially erred by finding that the appellant comes within the personal scope of the Withdrawal Agreement.
- (d) Reliance is placed Headnote (1) and (2) of Batool and others (other family members: EU Exit) [2022] UKUT 00219.
- (e) The judge has incorrectly treated Mr Amin as applying for facilitated residence instead of settlement as a family member under the Immigration Rules.

### **Grant of permission**

- 8. Permission was granted by First-tier Tribunal Judge Saffer on the basis that it is arguable that the judge had failed to apply Batool correctly.

### **Rule 24 Response**

- 9. There was no Rule 24 response.

### **Discussion and Analysis**

- 10. At the outset of the appeal Mr Basra confirmed that he had checked on the Home Office system. As far as Mr Amin was concerned, he had made an application on 23 May 2021 which was refused on 13 August 2021. There was no indication that he had made an application on 30 December 2021. The current application was made on 20 September 2021 after the end of the transition period. Mr Garrod submitted that it was likely that Mr Amin had made an application on 30 December 2020 because his six children had been allowed to enter the United Kingdom as a result of applications made on that date and had subsequently come to the UK to join their grandparents. His instructions were that such an application had been made but that there had been a problem because Mr Amin could not attend the biometric appointment. The judge was entitled to make this finding.
- 11. I consider firstly whether the judge erred in finding at [23], that “that the second appellant had applied with his entire family to facilitate entry into the UK at the time that he would have been considered as an extended family member under the EEA Regulations”.
- 12. Mr Basra relied on the written grounds of appeal. He submitted that the judge was wrong to find that Mr Amin had applied for facilitation prior to the end of the transition period. This was not factually correct and even if he had made an application, the application was made under the EUSS (Family Permit) and not under the EEA Regulations as an extended family member and was therefore not an application for his entry and residence to be facilitated.
- 13. Mr Basra relied on the wording of Article 10(2) and Article 10(3) of the Withdrawal Agreement. The judge was wrong to find that Mr Amin fell under the scope of the Withdrawal Agreement.
- 14. Mr Garrod accepted that Mr Amin could not succeed under the Appendix EU (Family permit) because Mr Amin did not meet the definition of “family member”,

which does not include son-in-law. He did not seek to vigorously oppose the grounds. He submitted that the judge's finding that Mr Amin had applied for facilitation was adequately reasoned.

15. I am satisfied that the judge has materially misdirected himself in law.
16. It appears that the judge simply accepted the EEA sponsor's oral evidence that Mr Amin made an application on 31 December 2020 inferring from the fact that Mr Amin's children were granted permits that such an application was made. It is manifest from [9] that even had an application been made by Mr Amin it had been refused. The judge records at [9] as follows:

“The sponsor stated that the first and second appellants applied for a family permit with their six children on 31 December 2020 to join the sponsor in the UK. The first and second applications were refused but the six children's applications were allowed, and they joined their EEA sponsor, their grandfather in the UK on 15 June 2021”.

17. The evidence before the judge was that a previous application had in fact been refused (which Mr Garrod confirmed were his instructions). There was no evidence that Mr Amin had pursued any appeal against this refusal. It is not entirely clear to me why the judge believed that the application on 31 December 2020 would still be outstanding. Mr Amin would not have made a second application in September 2021, had the first application been outstanding and the sponsor's own evidence was that the original application was refused. Any application made by Mr Amin had been refused and had been dealt with and was not the subject of the appeal before the judge. I am satisfied that on this basis that the decision appealed before the judge was dated 2 February 2022 and corresponded to an application which was made on 20 September 2021 well after the end of the transition period and after the specified date when the UK left the EU on 31 December 2020. The later application manifestly cannot be considered to be an application for facilitation as it postdates the transition period.
18. There was no documentary or supporting evidence before the judge to support the contention that Mr Amin had made an application prior to the end of the transition period under the EEA Regulations 2016 as an “extended family member” under Regulation 8 of the EEA Regulations.
19. On this basis, even had the judge correctly found that Mr Amin had made an application under the EUSS prior to the end of the transition period, in accordance with Batool, this could not be treated as an “application for facilitation” because the application that he made was as a family member not as an extended family member pursuant to EEA Regulations 2016. In this respect, I note the headnote at (1) and (2) of Batool which states as follows:

“(1) An extended (aka other) family member whose entry and residence was not being facilitated by the United Kingdom before 11pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

- (2) Such a person has no right to have any application they have made for settlement as a family member treated as an application for facilitation and residence as an extended/other family member.”
20. The judge has manifestly misdirected himself in law for the reasons above when finding that the appellant falls within the personal scope of the Withdrawal Agreement because he made an application for facilitation prior to the specified date.
21. Further the judge has misapplied the law by failing to apply Batool correctly. The application which led to the decision under appeal was made after 11pm GMT on 31 December 2020 and therefore Mr Amin could not fall under the personal scope of the Withdrawal Agreement.
22. I comment that although the judge refers to the Withdrawal Agreement in the body of the decision, in the Notice of decision he actually allows the appeal under Appendix EU of the immigration rules which is plainly wrong.
23. Further Mr Amin in line with Celik, was not able to rely on the concepts of proportionality and fairness because he had not applied for facilitation before the specified date and had no substantive right. I also comment that it was not argued before the judge that the refusal of a Family Permit would be a breach of Article 8 ECHR and the judge made no findings on this issue.
24. I therefore set aside the decision in relation to Mr Amin in its entirety because it contains material errors of law.
25. I go onto remake the appeal because this appeal concerns a question of law only and there are no further factual findings to be made. This was the course of action suggested by Mr Basra and Mr Garrod had nothing to add on the matter.

### **Remaking**

26. It is agreed by all parties that Mr Amin cannot succeed under Appendix EU.
27. I find that Mr Amin’s application for an EUSS Family Permit was made after the end of the “specified date”. He therefore did not apply for facilitation before 11pm GMT on 31 December 2020 and therefore as an extended family member does not fall within the personal scope of the Withdrawal Agreement at Article 10 (2) or Article 10 (3).

### **Notice of Decision**

28. Appeal dismissed under Appendix EU
29. Appeal dismissed under the Withdrawal Agreement.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

17 May 2023