IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005693
UI-2022-005694
UI-2022-005695
UI-2022-005696
First-tier Tribunal No: EA/10420/2021
EA/07564/2021
EA/07463/2021
EA/13980/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 March 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

HIRA JAVED
MUHAMMAD IRFAN
MUHAMMAD ALYAAN VIRK
MUHAMMAD MUSTAFA VIRK
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: None – the first appellant appeared in person by Teams video link
For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2023

DECISION AND REASONS

1. The appellants are a family, citizens of Pakistan, consisting of a wife and husband and their two children under the age of 18. The first appellant's real

brother is married to their EEA sponsor, a Romanian national. The EEA sponsor is the sister-in-law of the first and second appellant and the aunt of the third and fourth appellant.

2. They appealed against the respondent's decision of 24 March 2021 refusing their application, made on 23 December 2020, for Family permits to join their EEA sponsor under Regulation 8 of the Immigration (EEA) Regulations 2016 ("the 2016 Regulations") on the basis that they are extended family members of their EEA Sponsor.

3. The Entry Clearance Officer (ECO) accepted that the appellants were related as claimed to their EEA sponsor, however, did not accept that on the evidence provided that the EEA sponsor was a Qualified Person within the meaning of Regulation 6 of the 2016 Regulations and that the appellants were dependent on their EEA sponsor.

4. They appeal against the decision of First-tier Tribunal Zahed, promulgated on 26 July 2022, dismissing their appeal against the refusal to issue Family permits. That decision was from a consideration of the papers as there was no oral hearing.

5. At the hearing before us the first appellant appeared on a Teams video link from Pakistan to make submissions on behalf of all the family. She was assisted by an interpreter who translated in her first language of Urdu, although we noted that at times she spoke good English. The sponsor and the sponsor's husband both attended the hearing in person and were able to make further submissions in English. It is not necessary to record all the submissions given the concessions made by Mr Clarke which we record below at paragraphs 9 and 10. There were no technological glitches that interfered with the hearing. The appellants' remote participation from Pakistan was limited to making submissions concerning whether the decision of the judge involved the making of an error of law, consistent with the guidance given by Agbabiaka (evidence from abroad; Nare guidance) [2021] UKUT 286 (IAC), headnote paragraph (2).

Permission to appeal

6. Permission was granted by Upper Tribunal Judge O'Callaghan on 20 December 2022 for the following reasons:

> "7. It is arguable that the First-tier Tribunal erred at [7] of its decision in requiring the sponsor to be a qualified person, as defined by regulation 6 of the 2016 Regulations. The sponsor may also be a person enjoying permanent residence. This is in line with regulation 17(5)(b) and 18(4)(b) of the 2016 Regulations.
>
> 8. I further find that it is arguable that the reasoning at [10] is inadequate in light of the assertion at §8 of the grounds of appeal, particularly as to the existence of collection receipts."

The First-tier Tribunal decision of 26 July 2022

7. Judge Zahed stated:

"5. The ECO noted that the EEA sponsor's bank statements shows that previous to the time of application that she was receiving Universal Credit of £926 per month. The appellants have provided no evidence that their EEA sponsor was working at the time of application or at the time of decision. The appellants claim that their EEA sponsor had been previously working but had stopped working due to Covid, however there is no evidence that their EEA Sponsor had previously been working or that her employment ceased due to Covid. The EEA sponsor's bank statements do not show any evidence that she had previously been employed and only shows that she has been working for "deliveroo" since December 2021.

6. The appellants have submitted no evidence that their EEA sponsor was looking for employment or fell into any other of the Regulation 6 categories. The appellants have submitted no bank statements or employment evidence or self-employed evidence that shows that they were dependent on the first appellant's real brother who is the spouse of the EEA sponsor from 2016 to the date of application or to the date of decision. The only bank statements of the first appellant's brother is from January 2022, which is after the date of application and date of decision. I find on the documentary evidence before me and given that this was listed as a paper case and no questions or evidence could be sought from the EEA sponsor that the EEA sponsor was not a qualified person at the time that the money was sent to the appellants and thus was not exercising Treaty Rights at the time of application.

7. The appellants submit that their EEA sponsor had settled status on 3rd February 2020 and thus she was a qualified person. I find that being granted settled status pursuant to Appendix EU of the Immigration Rules does not abdicate the requirement for the EEA Sponsor to be a qualified person as defined under Regulation 6 as the application is made under the 2016 Regulations.

8. I have found that the EEA Sponsor is not a qualified person as defined under Regulation 8 of the Immigration (EEA) Regulation 2016 and thus the appellants cannot succeed in this appeal.

9. I find that although I do not need to find whether the appellants were dependent on their EEA sponsor, as the EEA sponsor was not a qualified person at the time of application and has not proved with sufficient documentary evidence that she is self employed as claimed at the date of hearing. There is no evidence from HMRC as to her self-employment status only a letter from an accountant. I find that is insufficient and not the kind of evidence to show that a person is self-employed.

10. However, I find that the appellants are not dependent on their EEA Sponsor. Although there are money transfer receipts there is no evidence to show that the money was received from 2018 until January 2021 when the first appellant has money transfers entering her bank account.

11.Further the appellants had stated that the second appellant, Muhammad Irfan was working until the end of 2107 when he lost his job. There is no evidence from the second appellant's previous employers that he has been let go or any evidence from the Federal Revenue Board of Pakistan that the second appellant was employed previously and this he is now no-longer employed or self-employed. I note that the first appellant was able to obtain a certificate from the Federal Revenue Board of Pakistan that she has not been employed and find the second appellant could have obtained such evidence.

12.I find that the appellants have not submitted sufficient evidence on a balance of probabilities that they are dependent on their EEA sponsor for their essential living needs and that the EEA sponsor is not a Qualified Person under the Regulations. I dismiss the appellants' appeals, as it does not meet the requirements of the Immigration (EEA) Regulations 2016."

The appellants' grounds

8. The first appellant asserted that:

"5.… a person needs to be exercising treaty rights for up to 5 years to qualify for Settled Status or to claim EEA rights, once Settled statues is granted then she do not need to show that she is exercising treaty rights. The Judge made an error of law by concluding that she needed to show that she was a qualified person by way of showing employment.

6. However, if the Honourable Judge is of the view that she still needed to show that she was exercising treaty rights. It is stated by the Judge at paragraph 6 that "the appellant submitted no evidence to proof that sponsor was looking for work, was employed, or self-employed, no bank statement was submitted". However, it is contrary to record as I have provided the documents to show that she was self-employed. Here the Judge is contradicting himself from what he stated at the end of paragraph 5 that her bank statement shows that she is working for Deliveroo.

7. It is submitted that I have provided all the documents to prove that my sponsor was exercising treaty rights which included her Bank statement (page 161 to 179), Letter from her accountant (page 147) and slips from Deliveroo (page 148 to 160). These are the best documents to prove that someone in self-employed specially when her first tax return was not due to be submitted at the time the bundle was prepared dated 13 April 2022. Now her tax return is submitted the document confirming the same is now attached which was issued by the HMRC. I failed to attach this at early stage because her Tax return was still not due to be submitted, hance at the time those were the best available documents to prove that she was exercising her treaty rights. However, the Judge have seemed to disregarded all these very important evidences therefore it can be concluded that he made the error of law.

8. At paragraph 10 it is stated by the Judge that the "Although there are money transfer receipts there is no evidence to show that the money was received from 2018 until January 2021". However, this is contrary to record I

have provided nearly 79 receipts, from (page 19 to 66) sending receipts are attached and from (page 67 to 100) collection receipts are attached which covers the period till 30 December 2020. Then from February 2021 my sponsor start sending me money in my bank account which can be verified from my bank account statement at (page 101 to 103). All these collection receipts and bank statement clearly shows that the money was received by the appellant from 2018 till January 2021, but the Judge failed to note this very important documents.

9. Furthermore, in paragraph 11 the Judge has stated as under "I note that the first appellant was able to obtain a certificate from the Federal Revenue Board of Pakistan that she has not been employed and find the second appellant could have obtained such evidence". However, I would like to confirm that I have attached the letter from FBR which is attached right next to my letter at (page 137,138). I am unable to understand why the Judge was asking for the same documents which is already attached. It clearly means that the Judge failed to consider all my documents meaningfully and he failed to give proper weightage which is an error of law.

10. My evidence was not considered by the Judge in a meaningful way for example documents to show my Sponsor was exercising treaty right such as her accountant letter Deliveroo slips and bank statement showing deposits from Deliveroo, my remittance collection receipts and FBR letter for my husband the second appellant. However, these documents were detrimental to my chances of succeeding in my appeal.

11. It is arguable whether my whole bundle was before the judge or not as it is not confirmed by the Judge in the determination what bundle was before him. It appeared that my bundle was not before the Judge because he was asking for same documents which were provided already which is a procedural error. In case the bundle was before the Judge then it means he failed to consider my main documents meaningfully which is an error of law."

Submissions

9. There was some discussion at the hearing as to whether a person holding "settled status" under the EU Settlement Scheme ("the EUSS") could be regarded as having accrued the right of permanent residence under the 2016 Regulations, in light of the judge's findings at paragraph 7. Mr Clarke took us to Condition 3 of paragraph EU11 of Appendix EU which provides that a "relevant EEA citizen" may be eligible for indefinite leave to remain under the EUSS on account of five years continuous residence (see sub-paragraph (b)). It follows, in Mr Clarke's submission, that the judge was right not to treat the sponsor's settled status as being the same as permanent residence under the 2016 Regulations.

10. Mr Clarke accepted that there was a material error of law in that the Judge failed to take into account the documents submitted concerning the sponsor's status as a qualified person, and the claimed dependency. The decision was accordingly unsustainable.

11. Given those concessions, we do not need to note in detail the submissions made by and on behalf of the appellants.

Conclusions and reasons

12. In our judgment, the judge was correct not to treat the sponsor as though she held the right of permanent residence under the 2016 Regulations simply because she had been granted "settled status" under the EUSS. Condition 3 of paragraph EU11 of the Appendix EU entitles a person to settled status merely on the basis of five years of continuous residence. That contrasts with the requirements of the 2016 Regulations which require an examination of whether such residence to have been "in accordance with these Regulations" (see, e.g., regulation 15(1)(a) of the 2016 Regulations, as in force at the date of the application to the Entry Clearance Officer). We find that the judge did not fall into error on account of his approach to the appellant's settled status.

13. However, we find that Mr Clarke was right to concede that the judge failed properly to consider the documentary evidence that was before him, both in relation to the sponsor's status as a qualified person (aside from the question of permanent residence), and in relation to the claimed dependency.

14. We therefore find that there was a material error of law in the decision of First-tier Tribunal Judge Zahed dated 26 July 2022. We set aside the decision.

15. In accordance with Part 3 of the Practice Directions for the Immigration and Asylum Chamber of the Upper Tribunal amended on 13 November 2014 we remit the appeal to the First-tier Tribunal for a de novo consideration with no findings preserved. That is because a significant level of factual finding is required, and the error of law is such that in effect there has been no proper First-tier Tribunal hearing. Any directions required for the filing of further evidence and the nature of the hearing will be issued by the First-tier Tribunal.

Notice of Decision

There was a material error of law in the decision of First-tier Tribunal Judge Zahed dated 26 July 2022. We set aside the decision.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 March 2023

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.