



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002912
EA/16167/2021**

THE IMMIGRATION ACTS

**Heard at Field House
on 1 November 2022**

**Decision & Reasons Promulgated
On the 24 January 2023**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**SOHAIB ALTAF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT / ENTRY
CLEARANCE**

Respondent

Representation:

For the appellant: In person

For the respondent: Ms A Everett, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Parkes (“the judge”), promulgated on 11 April 2022. By that decision, the

judge dismissed the Appellant's appeal against the Respondent's refusal to grant him leave to remain under the EUSS.

2. The Appellant is a citizen of Pakistan and the brother of an EEA citizen residing in the United Kingdom at all material times. In January 2019 the Appellant applied for a family permit under the Immigration (European Economic Area) Regulations 2016 ("the Regulations"). A family permit was duly issued on 10 December 2020, valid until 10 June 2021. The Appellant's passport was endorsed accordingly and provided to him on 5 January 2021. Clearly, the basis of the family permit was that the Appellant was a dependent relative, in other words an extended family member under regulation 8 of the Regulations.
3. The Appellant arrived in the United Kingdom on 18 March 2021 and made an application under the EUSS the following day. By a decision dated 29 October 2021, the Respondent refused the EUSS application on the basis that the Appellant was apparently a "joining family member of a relevant sponsor". As the relationship of brother did not fit within the definition of "joining family member of a relevant sponsor" within Annex 1 to Appendix EU of the Immigration Rules, the application fell to be refused.
4. The Appellant appealed to the First-tier Tribunal under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.

The decision of the First-tier Tribunal

5. The Appellant has been unrepresented at all times. Perhaps because of this, he elected to have his subsequent appeal to the First-tier Tribunal decided without a hearing.
6. The appeal came before Judge Parkes on 29 March 2022. His extremely brief decision runs to 7 paragraphs. The essence of his decision is contained in [4], which reads as follows:

"There are 2 routes for applications to be made and, as I understand the process, a choice is made online at the start of the application process. Applications under the 2016 Regulations are dealt with separately from those under the EUSS and there is no transfer between the 2 schemes. The Appellant is right that brothers are covered by the EEA Regulations 2016. However, they are not covered by the definition in the EUSS and that was the application that the Appellant made. The Appellant does not meet the requirements of the EUSS and the appeal cannot succeed. "

The Appellant's challenge

7. The Appellant applied for permission to appeal on the basis that his particular circumstances meant that he was able to meet the relevant

Immigration Rules. This was because he had applied for and been issued with a family permit under the Regulations before 31 December 2020 and had arrived in the United Kingdom before 30 June 2021.

The hearing

- 8.** The Appellant attended and I explained the proceedings to him. I am satisfied that he understood what was taking place.
- 9.** Ms Everett, in her customary fair manner, expressed the view that the Immigration Rules and accompanying guidance indicated that the Appellant had in fact met the relevant provisions and that his appeal should have been allowed by the judge. Having said that, it was difficult for her to pinpoint the precise legal route to that conclusion.
- 10.** At the end of the hearing I reserved my decision.

Discussion and conclusions

- 11.** Having attempted to navigate my way through Appendix EU and the guidance (not an easy undertaking), I am satisfied that the judge materially erred in law and that rather than the Appellant's appeal being dismissed, it should have been allowed in the first instance.
- 12.** The Respondent was wrong to have categorised the Appellant as a "joining family member of a relevant sponsor". He had already obtained a family permit under the Regulations prior to the end of the implementation period (that being 31 December 2020). He had then arrived in this country prior to the end of the grace period (that being 30 June 2021) and made his EUSS application in good time. In order to qualify as a "family member of a relevant EEA citizen" under Annex 1 to Appendix EU, a dependent relative (such as the Appellant) would ordinarily have had to have been resident in the United Kingdom prior to 31 December 2020.
- 13.** However, Annex 1 also includes definition of a "relevant EEA family permit case". That provides an exception to the need to have been resident in the United Kingdom prior to the specified date (31 December 2020). The definition of "relevant EEA family permit case" includes those who were a dependent relative who arrived in the United Kingdom after the specified date and before 30 June 2021 in possession of a valid EEA family permit issued under the Regulations on the basis of a valid application made under the Regulations before the specified date. The Appellant clearly fell within that definition. Therefore, he was not required to have been resident in the United Kingdom prior to 31 December 2020 and therefore fell within the definition of a family member. In turn, he satisfied the requirement of EU14 condition 1(a)(ii) of the eligibility criteria under Appendix EU.

- 14.** The Respondent therefore should have granted the application in the first instance. In any event, the judge was wrong to have, as it were, followed the Respondent's erroneous decision by dismissing the appeal.
- 15.** It follows from the foregoing that the judge materially erred in law and his decision must be set aside.

Re-making the decision

- 16.** I go on and re-make the decision by referring back to the analysis undertaken at paragraphs 12-14, above, and accordingly allowing the Appellant's appeal under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020. I make it clear that there has never been any suggestion that the Appellant is no longer dependent on his brother and indeed at the hearing he confirmed that he was still living with him and financially dependent on him.

Notice of Decision

- 17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**
- 18. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**
- 19. I re-make the decision by allowing the appeal under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.**

Signed: H Norton-Taylor

Date: 21 November 2022

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a full fee award of £70.00.

Signed: H Norton-Taylor

Date: 21 November 2022

Upper Tribunal Judge Norton-Taylor