



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001395
UI-2023-001394
First-tier Tribunal No:
EA/02600/2021
EA/02635/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 December 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Mr Jasbir Singh Mehta
Mrs Sanpreet Kaur
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Mozam, Twinwood Law Practice Limited

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 23 November 2023

DECISION AND REASONS

1. The appellants are nationals of India. On 24 November 2020 they made applications for an EEA family permit as the 'dependent direct family member' of their daughter-in-law, a Romanian national. The applications were considered by the respondent by reference to the requirements set out in Regulation 7 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 EEA Regulations"). The applications were refused because the respondent was not satisfied that the appellants had provided sufficient evidence to establish that they are related to the sponsor as claimed. The respondent also said the appellants had not provided sufficient proof that they are dependent upon their EEA sponsor.
2. The appellants appeal was dismissed by First-tier Tribunal Judge Parkes for reasons set out in a decision promulgated on 14 June 2022.

3. The appellant's claim the decision of Judge Parkes is vitiated by material errors of law. They claim Judge Parkes failed to adequately address whether the support provided by the sponsor is required to meet their essential needs. The appellants' claim Judge Parkes erred in his approach to the requirements and criteria set out in the 2016 EEA Regulations and erred in his approach as to the test applied.
4. Permission to appeal was granted by First-tier Tribunal Judge Clarke on 28 April 2023. Judge Clarke said:

"It is arguable that the Judge materially erred in their assessment relating to the support given by the Sponsor, given that the evidence recorded is that there has been monthly support since January 2019. It is also arguable that the Judge materially erred by making inadequate findings on the joint nature of the Sponsor's finances with her husband."
5. The respondent has filed and served a rule 24 response dated 15 May 2023. The respondent concedes Judge Parkes erred in his assessment of the support provided by the sponsor and made inadequate findings as to the nature of the sponsor's joint finances with her husband. The respondent accepts the decision must be set aside with no findings preserved.

Decision

6. The respondent concedes the decision of Judge Parkes is vitiated by an error of law. I am satisfied Judge Parkes failed to carry out the nuanced analysis that is required to determine whether the appellants are dependent on the sponsor for their essential needs and I do not therefore need to say anything further about the grounds of appeal.
7. It follows that I allow the appeal and set aside the decision of First-tier Tribunal Judge Parkes.
8. As to disposal, I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both Mr Lawson and Mr Mozam submit that in light of the errors of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved.
9. Having considered the Senior President's Practice Statement at paragraph 7.2, I have decided to remit the appeal to be heard afresh by another judge of the FtT. No findings can be preserved. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

10. The decision of First-tier Tribunal Judge Parkes is set aside.
11. The parties will be notified of a fresh hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 November 2023