



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003961
UI-2023-003962
UI-2023-003963
UI-2023-003964
UI-2023-003965

First-tier Tribunal No: EA/12783/2022
EA/12787/2022
EA/12788/2022
EA/12792/2022
EA/12794/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th November 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NOMAN AKRAM
MUHAMMAD AYAAN
SUDAI NOMAN
HIRA NOMAN
ALMEERA CHAUDHRY
(NO ANONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Mr M Parvar, Senior Presenting Officer

For the Respondent: Mr A Maqsood, Counsel, instructed by LawGate Solicitors

Heard at Field House on 2 November 2023

DECISION AND REASONS

Introduction

1. I shall refer to the parties as they were before the First-tier Tribunal: therefore the Secretary of State is once more “the Respondent” and Mr Akram and the other Appellants will be referred to as “the Appellants”.
2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Adio (“the judge”), promulgated on 6 June 2023 following a hearing on 18 May of that year. The judge allowed the Appellants’ appeals against the Respondent’s refusals of their EUSS family permit applications. The judge purported to allow those appeals on the basis of the Immigration Rules.
3. The first Appellant is the father of the other four and is the husband of Ms Tahira Noman (she being the mother of the four children). Ms Noman is the sister of Mr Abdullah Bashir who was the relevant EEA citizen and the Sponsor of the EUSS applications.
4. There is a somewhat unusual background to these cases and I will summarise it here only briefly. Ms Noman made a family permit application under the Immigration (European Economic Area) Regulations 2016 whilst they were still in force. That application was refused, but she succeeded on appeal before First-tier Tribunal Judge Handler. Her success on appeal post-dated the revocation of the 2016 Regulations and the cessation of the granting of family permits under those Regulations. However, in order to avoid unfairness to those in Ms Noman’s position, the Respondent operated what was described as a concession by granting family permits to successful appellants. Unfortunately, and for reasons which are not entirely clear to me, the Appellants did not make applications at the same time as Ms Noman. It appears as though they believed that they were making a joint application and they were of the view that Ms Noman’s success would result in them all being able to come to the United Kingdom.
5. In the present proceedings there was no issue as to the essential factual background or the credibility of the evidence. It was accepted that the Sponsor had been financially supporting the whole family unit. They

were effectively dependent on him. It is clear that the judge considered the evidence before him and was entitled to make reference back to Judge Handler's decision. It is also clear that the judge had a degree of sympathy for the family unit, given what was found to be a genuine, albeit mistaken belief that Ms Noman's ultimately successful application would have resulted in the whole family unit being able to come to this country together.

6. Having accepted that the Appellants were dependent on the Sponsor, the judge recognised that they were not "*strictly*" family members for the purposes of the definition contained in Annex 1 to Appendix EU (Family Permit) to the Immigration Rules. However, he concluded that they "*would qualify as dependent relatives and therefore meet the requirements of Annex 1 definition*". He concluded that Judge Handler's findings as regards Ms Noman would also apply to the Appellants. Thus, the judge was satisfied that the Appellants met the requirements for pre-settled status under Appendix EU (Family Permit) and he allowed the appeals with reference to the Immigration Rules.

The grounds of appeal

7. The Respondent drafted concise grounds of appeal and permission was granted by First-tier Tribunal Judge Beach in a detailed decision dated 12 September 2023. Judge Beach helpfully analysed the situation and regarded it as arguable that the judge may have incorrectly applied Appendix EU (Family Permit) with particular reference to the definitions contained in Annex 1.

The hearing

8. At the hearing before me Mr Maqsood provided concise and helpful submissions, seeking to counter the Respondent's challenge. He rightly described the factual situation as unusual and emphasised the absence of any challenge to the underlying factual matrix. He recognised that the judge's reasoning may have resulted in some confusion, but that the

judge had in effect sought to give the benefit of the concession applied to Ms Noman to the Appellants as well.

Conclusions on the error of law issue

9. I am clear that the judge materially erred in law and that his decision must be set aside.
10. I, like the judge, have a degree of sympathy for the Appellants in this case. They appear to have laboured under a misapprehension as to what Ms Noman's application covered in the first instance, and they were and probably still are dependent on the Sponsor. However, they simply could not meet the definition of "dependent relatives" under Annex 1 to Appendix EU (Family Permit) because that definition did not and does not cover a brother-in-law (in respect of the first Appellant's relationship to the Sponsor) or their children. With the best will in the world, the judge was simply not entitled to conclude that the appeals could succeed on the basis that he relied on.
11. The judge made no reference to the Withdrawal Agreement, but in any event in light of Celik v SSHD [2023] EWCA Civ 921 any such reliance was not available to the Appellants. There was no question of fairness or proportionality entering the equation. Article 8 was not a live issue.

Re-making the decision

12. It is clearly appropriate for me to go on and re-make the decision in these appeals. Mr Maqsood suggested that the matter could be adjourned in order that a section 120 notice be issued, but that was not an appropriate course of action. The Respondent simply would not have issued one and in any event it is too late in the day for that to be attempted. It is open to the Appellants to now make entry clearance applications, including representations on Article 8.
13. I proceed to re-make the decisions on the basis of the unchallenged findings made by the judge and Judge Handler (in respect of Mrs Noman).

I accept that the Appellants are more likely than not to remain dependent on the Sponsor. However, that does not bring them within the scope of the restricted definition of “dependent relatives” under Annex 1 to Appendix EU (Family Permit). The Appellants cannot satisfy Appendix EU (Family Permit) and their appeals must be dismissed with reference to the Immigration Rules.

14. There is no room for any proportionality exercise in these appeals as the Appellants cannot rely on the Withdrawal Agreement in light of both Batool and Others (other family members: EU exit) [2022] UKUT 219 (IAC) and Celik.

15. Article 8 is not in play, as I have already mentioned.

Anonymity

16. There is no basis for making an anonymity direction in these appeals and I do not do so.

Notice of Decision

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

I re-make the decision in these linked appeals and dismiss them on all grounds.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 6 November 2023