



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

Case No: UI-2022-001292

First-tier Tribunal No:  
EA/04560/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 15 January 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Satnam Singh  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer  
For the Respondent: No appearance by or on behalf of the appellant

**Heard at Birmingham Civil Justice Centre on 4 July 2023**

**DECISION AND REASONS**

**INTRODUCTION**

1. The appellant in the appeal before me is the Secretary of State for the Home Department (“SSHHD”) and the respondent to this appeal is Mr Satnam Singh. However, for ease of reference, in the course of this decision I adopt the parties’ status as it was before the FtT. I refer to Mr Satnam Singh as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of India. On 7 December 2020 he applied for an EEA Family Permit as a family member of his son, Mr Nirpal Singh, a Portuguese national exercising treaty rights in the UK. The application was refused by the respondent for reasons that set out in a decision dated 1 March 2021. The respondent was not satisfied that the appellant's relationship with Mr Nirpal Singh is as claimed nor that the appellant is dependant upon Mr Nirpal Singh as he claims. The respondent also noted Mr Nirpal Singh is in receipt of regular Working and Child Tax credits, a means-tested benefit awarded to the sponsor to cover the essential outgoings of his own household. The respondent noted the appellant had provided sufficient evidence to demonstrate that Mr Nirpal Singh is a qualified person, but was not satisfied that it is sustainable for him to financially support the appellant, along with his own family in the UK. The respondent said that there is a risk therefore, that after arriving in the UK, the appellant may become a burden on public funds.
3. The appellant's appeal against that decision was allowed by First-tier Tribunal Judge Chamberlain ("the judge") for reasons that set out in her decision promulgated on 6 January 2022.

#### **THE APPEAL TO THE UPPER TRIBUNAL**

4. The respondent claims that in reaching her decision, the judge failed to address the issue of the whether the appellant will become an unreasonable burden on the social assistance system of the United Kingdom. It is therefore unclear whether the appellant satisfies the requirements of Regulation 13(3) of The Immigration ( European Economic Area) Regulations 2016 ("the 2016 EEA Regulations"). The failure to address a material matter that was relied upon by the respondent in the decision refusing the application, amounts to a material error of law.
5. Permission to appeal was granted by Upper Tribunal Judge Kamara on 4 January 2023. She said:

"It is arguable that the judge did not engage with an issue raised in the notice of immigration decision. That issue being whether the appellant satisfied the requirements of Regulation 13(3) of The Immigration (European Economic Area) Regulations 2016."

#### **THE HEARING OF THE APPEAL BEFORE ME**

6. The appellant was not represented at the hearing before me. Neither did the sponsor attend the hearing. According to the Tribunal records, the parties were informed on 18 January 2023 that permission to appeal to the Upper Tribunal has been granted by the Upper Tribunal. The Notice of the Hearing before me was sent to the parties on 13 June 2023. The Notice was sent to the appellant by email and a copy was sent to the sponsor both by email and by post.
7. The appellant is plainly aware of the hearing. According to the Tribunal's records, the Tribunal received a telephone call from the sponsor advising that the appellant has been granted a 'visa' and the sponsor could not

understand why the appeal had been listed for hearing. In the absence of any further explanation for the appellant's absence, I was satisfied that it is in the interests of justice to hear the appeal in the absence of the appellant.

8. Mr Bates submits that in considering whether to issue an EEA family permit, the question whether the appellant will be a burden is relevant. It is relevant to initial rights of residence in Regulation 13(3), and it must be relevant in the overall assessment that is undertaken. Mr Bates submits the judge did not resolve the issue. The sponsor may have been able to support the appellant in India, but that may not be possible in the UK.
9. Following the hearing, the Tribunal received an email from Mr Bates in which he confirmed that the respondent's records indicate that following the refusal of his application for an EEA Family Permit on 1 March 2021, the appellant applied via the EUSS route on 17 August 2021. He was granted leave to enter on 11 January 2022 valid until 11 July 2022. A further application for leave to remain was lodged by the appellant on 17 April 2022 and on 31 May 2022, the appellant was granted leave to remain until 1 June 2027. Mr Bates submits that if the decision of the FtT is set aside, the Tribunal should consider whether the appellant's appeal should now be treated as abandoned under Rule 17A(b) of The Tribunal Procedure (Upper Tribunal) Rules 2008.

### **Error of Law**

10. Without having had the benefit of hearing any counter argument to the contrary, I accept the submission made by Mr Bates that the requirement in Regulation 12 that an entry clearance officer must issue an EEA Family Permit to a person who is a family member of an EEA national where the relevant requirements are met, is subject to Regulation 13(3), which provided as follows:

"An EEA national or the family member of an EEA national who is an unreasonable burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation."
11. The fact that the sponsor is in receipt of Working and Child Tax Credits and that the appellant may become a burden on public funds was a matter that was relied upon by the respondent when the application was refused. The judge noted this ground of refusal at paragraph [9] of her decision.
12. The Judge set out her findings and conclusions at paragraphs [11] to [20] of the decision. She found that the appellant and sponsor are related as claimed. She also accepted the appellant is dependent on the sponsor to meet his essential needs. I accept, as Mr Bates submits, the judge failed to address whether the appellant may in all the circumstances be an unreasonable burden on the social assistance system of the United Kingdom. That is particularly so, where the judge noted the appellant had a serious head injury as a result of an accident in 2017, and that following that accident, he was supported and looked after by his wife (*the sponsor's mother*) until her death in 2019. The Judge did not address the sponsor's income in her decision.

13. I am satisfied that the decision of the FtT is vitiated by a material error of law and must be set aside.

#### **DISPOSAL**

14. As to disposal, it seems the appellant is now in the UK and on 31 May 2022, he was granted leave to remain until 1 June 2027 under the EU Settlement Scheme. Although Mr Bates invites the Tribunal to treat the appeal as abandoned, in *Ammari (EEA appeals - abandonment)* [2020] UKUT 00124 (IAC), the Upper Tribunal confirmed that a grant of leave to remain following an application under the EU Settlement Scheme does not result in an appeal against an EEA decision brought under the 2016 EEA Regulations being treated as abandoned.
15. The appropriate course is for the decision to be remade by me in the Upper Tribunal.
16. In the absence of the appellant and his sponsor, or any further evidence, I have considered the evidence that was before the FtT. The focus of that evidence is upon the appellant's dependence on his son. In his witness statement dated 12 August 2021, Mr Nirpal Singh simply claims that it would be more convenient and cost effective if he were able to support the appellant in the UK. A statement made by Mr Amandeep Singh dated 14 August 2021 also claims it would be more convenient and cost effective if his brother (Nirpal Singh) were able to support the appellant in the UK.
17. The evidence fails to engage with the concern raised by the respondent and I am not satisfied that the appellant has established on the evidence that he will not be an unreasonable burden on the social assistance system of the United Kingdom. He does not therefore have a right to reside under Regulation 13.
18. It follows that I remake the decision and dismiss the appeal.

#### **NOTICE OF DECISION**

19. The decision of First-tier Tribunal Judge Chamberlain promulgated on 6 January 2022 is set aside.
20. I remake the decision and dismiss the appellant's appeal against the respondent's decision of 1 March 2021 to refuse his application for an EEA Family Permit.

**V. L Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**22 December 2023**

