



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-0002433  
EA/07407/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 September 2022**

**Decision & Reasons Promulgated  
On 14 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON  
DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**SIDRA MUNIR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

Representation:

For the appellant: no appearance

For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hoffman promulgated on 14 February 2022 dismissing her appeal against the decision of the Entry Clearance Officer dated 10 March 2021 refusing her application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) of the Immigration Rules.
2. The hearing took place in person in Field House. There was no appearance on behalf of the appellant. We were satisfied that she had been informed

by email of the date, time and venue of the hearing because on 4 September 2022 she responded to that email sending further information to the tribunal. We heard submissions from Mr Whitwell and we reserved our decision.

## **Background**

3. In summary the background is that the appellant is a citizen of Pakistan, her date of birth is 30 June 1988. On 16 December 2020 she applied for an EUSS Family Permit. Her sponsor is Mr Kamaran Malik, a Dutch national whom she described as her 'maternal brother', however the First-tier Tribunal Judge clarified that the sponsor is the appellant's maternal cousin [3]. It was asserted that she was reliant on her sponsor for financial support and that he sent £100 per month to her.
4. In a decision dated 10 March 2021, the respondent rejected the appellant's application. The sole reason for refusal was that the respondent did not accept that the appellant had provided sufficient evidence to prove that she was the family member of a relevant EEA or Swiss citizen for the purposes of Appendix EU (Family Permit) of the Immigration Rules.

## **First-tier Tribunal decision**

5. The First-tier Tribunal Judge considered paragraph FP6 and Annex 1 of Appendix EU (Family Permit) of the Rules. The judge identified that the sole issue for determination in this appeal is whether the appellant meets the definition of a "family member of a relevant EEA citizen" as set out under Annex 1. The judge noted that the appellant and the sponsor are maternal cousins and that the definition of "family member of a relevant EEA citizen" does not include a cousin. The judge found that, because the appellant falls outside of the definition of "family member of a relevant EEA citizen", she does not meet the requirement set out under paragraph FP6(b) of Appendix EU (Family Permit). The judge found that the appellant cannot satisfy the requirements for entry clearance under paragraph FP3(b) and that she does not therefore qualify for entry clearance under Appendix EU (Family Permit) and her appeal was dismissed.

## **The challenge to the First-tier Tribunal Judge's decision**

6. The appellant contends in the grounds of appeal that there are three errors in the judge's decision. She firstly contends that the judge failed to appreciate that the appellant had initially applied for entry clearance on 30 January 2020 but that she had to submit a new application due to delays in complying with the biometric registration process due to covid restrictions. The second ground of appeal is that the appellant applied as an extended family member as defined in regulation 8 of the Immigration (EEA) Regulations 2016. In the third ground she contends that she has provided the documents to evidence the relationship with the sponsor and to establish that he is a qualified EEA national. She further contends that

she provided evidence to establish that she had been dependant on the sponsor in Pakistan and will be dependant on him when she enters the UK.

7. First-tier Tribunal Judge Hollings-Tennant granted permission to appeal on 28 April 2022 on the basis that, in his view, in essence, the grounds assert that the Judge erred in law by failing to consider whether the appellant could meet the requirements under regulation 8 of the Immigration (European Economic Area) Regulations 2016 as an 'extended family member' given that she applied before the 'specified date', that being 31st December 2020. Judge Hollings-Tennant noted that the Judge considered the matter under Appendix EU (Family Permit) of the Immigration Rules and concluded that the appellant does not meet such requirements. However, as the appellant applied for entry clearance on 16 December 2020, the Judge arguably ought to have considered whether the appellant could qualify as an extended family member under the EEA Regulations in force at the time or the extent to which Articles 10 and 18 of the Withdrawal Agreement could avail her. Although the appellant applied under the EU Settlement Scheme, Judge Hollings-Tennant considered it arguable that it was sufficiently clear that she was seeking entry as an extended family member bearing in mind that she did not have legal representation and there was no Home Office representative at the hearing. He also noted that the appellant cannot make another application for entry clearance on the same basis as the route has now closed.

## Discussion

8. In granting permission to appeal Judge Hollings-Tennant concentrated on the second ground of appeal in which the appellant appears to contend that the application she made was as an extended family member as defined in regulation 8 of the Immigration (EEA) Regulations 2016. However there is no evidence of any application made under the 2016 Regulations. The visa application in the Home Office bundle is clearly an application under the EU Settlement Scheme.
9. In any event, the issue identified in the grant of permission to appeal has now been resolved by the Upper Tribunal in the decision in Batool and others (other family members: EU exit) [2022] UKUT 00219 (IAC) which was reported after Judge Hollings-Tennant granted permission to appeal.
10. The decision in Batool is summarised in the head note as follows:
  - (1) *An extended (oka other) family member whose entry and residence was not being facilitated by the United Kingdom before 11pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.*

(2) *Such a person has no right to have any application they have made for settlement as a family member treated as an application for facilitation and residence as an extended/other family member.*

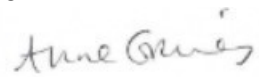
11. The decision makes it clear that where an extended (other) family member made an application under Appendix EU before the end of the transition period the respondent was not obliged to consider that application as if it had been an application for a residence card as an extended family member the Immigration (EEA) Regulations 2016. Therefore the ground identified by Judge Hollings-Tennant cannot succeed.
12. The appellant contended in ground one that the judge failed to appreciate that she had initially applied for entry clearance on 30 January 2020 but that she had to submit a new application due to delays in complying with the biometric registration process due to covid restrictions. However this is not material to the issue in the appeal. The appellant does not claim to have made an earlier application under the 2016 EEA Regulations, in fact the appellant set out in the application history that the application was an EUSS family permit application. The earlier application was made during the transition period and it appears to have been on the same basis as the application leading to the decision under appeal. The earlier application has no relevance to the decision under appeal. This ground discloses no material error in the decision of the First-tier Tribunal.
13. In the third ground the appellant contends that she provided the documents to evidence the relationship with the sponsor and to establish that he is a qualified EEA national. She further contends that she provided evidence to establish that she had been dependant on the sponsor in Pakistan and will be dependant on him when she enters the UK. However the judge did not make findings on these issues and Mr Whitwell confirmed that there was no challenge in the refusal decision to the claimed relationship or the sponsor's activity in the UK. This challenge is not materially relevant to the sustainability of the First-tier Tribunal decision as explained above.
14. Therefore for the reasons set out above we find that the appellant has not established that there is a material error of law in the decision of the First-tier Tribunal judge.

## **DECISION**

15. For the foregoing reasons, our decision is as follows:
  - **The making of the previous decision did not involve the making of an error on a point of law and we do not set aside the decision but order that it shall stand.**

Signed:  
2022

Date: 12 September

A handwritten signature in cursive script that reads "Anne Grimes".

Deputy Upper Tribunal Judge Grimes