



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003815
UI-2022-003817
First-tier Tribunal No:
EA/01069/2022
EA/01071/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 March 2023

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

(1) Mrs Hasna Hena
(2) Mr Md Sultan Uddin
(NO ANONYMITY DIRECTION MADE)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: *Mr M West*, Counsel, instructed by Commonwealth Solicitors
For the Respondent: *Ms S Cunha*, Senior Home Office Presenting Officer

Heard at Field House on 16 January 2023

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 16th January 2023.
2. This is an appeal by the appellants against the decision of First-tier Tribunal Judge Chana, (the 'FtT'), promulgated on 28th June 2022, by which she dismissed their appeals against the respondent's refusal on 21st December 2021

of their applications for family permits to enter the UK as dependent family members of an EEA national, their son's wife and hence their daughter-in-law, under Appendix EU (Family Permit) of the Immigration Rules. In her reasons for refusal, the respondent did not accept the relationship as claimed. In particular, the respondent was concerned that the appellants' son's birth certificate was registered 30 years after the date of birth without any other evidence to confirm that such late registration was acceptable and in accordance with the birth registration laws of Bangladesh, the appellants' country of origin. The respondent was not satisfied that the appellants had provided satisfactory evidence of the claimed relationship to show that they were family members. The refusal decision offered the appellants the right of appeal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020.

The FtT's decision

3. For reasons that are not explained, the FtT regarded there as being a jurisdictional issue by reference to the Immigration (EEA) Regulations 2016. This was despite the fact that applications were made under Appendix EU (FP) of the Immigration Rules, and the refusal decisions were by reference to the same Appendix, rather than the 2016 Regulations, and had contained statements that the appellants had the right of appeal. The FtT erroneously stated at paragraph [1] that the respondent's decisions were to refuse the appellants' applications as family members of their daughter-in-law pursuant to regulation 8(2) of the 2016 Regulations, namely as extended family members. As the FtT recognised at para [5], the issue of jurisdiction had not been raised in the reasons for refusal letter, but the FtT stated that she had to decide whether she had jurisdiction to hear an appeal under the EU Settlement Scheme, in respect of the appellants, as extended family members of the spouse of an EEA national. At para [6], the FtT referred to the 2016 Regulations and stated that, "The separation agreement transforms the 2016 regulations to Appendix EU. The EU continues to operate within the United Kingdom within the withdrawal agreement." If that passage is intended to suggest the continuing general applicability of EU law, it is not legally correct.
4. The FtT did not go on to make any findings of fact in her decision. Instead, she concluded at para [15] that the appellants had no rights of appeal under the 2016 Regulations, as applied by the Withdrawal Agreement.

The grounds of appeal and grant of permission

5. The appellants lodged grounds of appeal which are essentially that the respondent had expressly provided a right of appeal in her decisions; and that the appellants' applications and the respondent's decisions had been under an entirely different set of provisions (Appendix EU(FP)) from those considered by the FtT when she had identified her concerns about whether she had jurisdiction.
6. First-tier Tribunal Judge Parkes granted permission on 9th August 2022. The grant of permission was not limited in its scope.

The hearing before us and the respondent's concession

7. Ms Cunha began by rightly conceding that the FtT had erred in law. Put simply, the FtT had mischaracterised the applications as having been under the 2016

Regulations; similarly misunderstood the respondent's decisions as being under the 2016 Regulations, and ignored the fact that both decisions had specified (correctly) that the appellants had statutory rights of appeal.

Decision on error of law

8. We conclude that the FtT erred in law, such that her decision is unsafe and cannot stand. We therefore set aside her decision. She made no findings whatsoever, so that there are none to preserve.

Disposal

9. With reference to paragraph 7.2 of the Senior President's Practice Statement, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing. Having canvassed the opinion of both representatives, they agreed to this course of action. The FtT made no findings at all. Paragraph 7.2(b) is applicable, as the extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made comprises the entirety of the facts. While Mr West submitted that there was a formal concession by the respondent before the FtT that the appellants were dependent on the sponsor, he agreed that it was appropriate for the FtT to resolve whether there had been such concession. No such concession was recorded in the FtT's written decision, about which we say no more.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and we set it aside.

We remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Chana.

No anonymity direction is made.

Signed **J. Keith**

Date: 24th January 2023

Upper Tribunal Judge Keith