



IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

**UT ref: UI-2022-003372**  
FtT ref: EA/01300/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:  
On 6 April 2023

Before

Mr C M G OCKELTON, VICE PRESIDENT, & UPPER TRIBUNAL JUDGE MACLEMAN

Between

**ENTRY CLEARANCE OFFICER**

Appellant

and

**SABA LATIF**

(no anonymity order made)

Respondent

Heard at Edinburgh on 7 February 2023

*For the appellant (ECO), Mr A Mullen, Senior Home Office Presenting Officer*  
*For the respondent, no appearance*

**DECISION AND REASONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant is a citizen of Pakistan, born on 19 May 1981. The respondent refused her application for an EU Settlement Scheme (EUSS) family permit on 13 December 2021.
3. The ECO's decision notes that eligibility requires the sponsor of the application to be resident in the UK or travelling with the applicant to the UK within 6 months of the date of application, and continues:

I am not satisfied from the evidence and information provided, or otherwise available, that your sponsor, as named in your application form was resident in the UK at the date of your application for an EU Settlement Scheme family permit or will be travelling with you to the UK within six months of the date of application. The evidence and information provided, or otherwise available, was

not adequate because you have declared in the application form when asked “Is your sponsor travelling to the UK with you?” you stated ‘No’ and when asked “Is your sponsor in the UK?” you stated ‘No’. As you have chosen to say no to both questions and declared this information to be true I am not satisfied you meet the eligibility requirement as so stated. Therefore, your application does not meet the eligibility requirements of the EU Settlement Scheme family permit and it has been refused.

4. The appellant appealed to the FtT. Her grounds say simply, “The decision is not in accordance with the immigration rules, appendix EU family permit”.
5. The appeal came before FtT Judge McTaggart on 24 May 2022. There was no appearance for the appellant. The respondent was represented by Mr Crosbie who (unsurprisingly, perhaps) had nothing to add.
6. The Judge’s decision, promulgated on 15 June 2022, at [21-24] approaches the case on the basis that the respondent does not contest anything in the application form and accepts that the sponsor, her husband, has “pre-settled status” and is living in Edinburgh with their three children. On the view that the questions relied upon by the respondent do not accurately reflect the requirements of the rules, and the answers are consistent with the rules being satisfied, the Judge at [27] finds it “more likely than not that the sponsor ... is resident in the UK as required”, and goes on to allow the appeal.
7. The ECO applied to the FtT for permission to appeal to the UT. On 1 July 2022 Judge Hollings-Tennant granted the application: ...

The grounds assert that the Judge has erred in law by failing to give adequate reasons for finding that the appellant’s sponsor is resident in the United Kingdom. It is argued that the Judge did not consider or give weight to the fact that the appellant failed to provide an appeal bundle and the sponsor did not attend the hearing without explanation.

The Judge makes clear that the appeal was listed for oral hearing and that steps were taken to contact the sponsor to no avail. As the sponsor failed to attend the hearing and no further documentary evidence was adduced, the Judge ought to have at least considered these factors and given such appropriate weight in assessing whether the appellant had provided sufficient evidence to discharge the burden of proof upon her. He does not refer to supporting evidence of residency save for the assertions made in the application form, in which the appellant indicated the sponsor was not in the United Kingdom.

... it is at least arguable the evidence presented was insufficient to reach the conclusion that the appellant had discharged the burden of proof upon her to demonstrate that her sponsor is resident in the United Kingdom ...

8. Notice of the hearing before us was issued on 17 January 2023. The hearing was listed for 10 am. Parties were requested to arrive 15 minutes in advance, and

directed to provide skeleton arguments by 31 January 2023. There was no appearance for the appellant by 11.20 am. She had not communicated with the UT or with the respondent.

9. It is possible that contact details for the appellant and sponsor on the forms she provided to the ECO and to the FtT are not up-to-date. The responsibility is the appellant's. Rule 13 (5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 states:

The UT and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent and delivered until receiving written notification to the contrary.

10. There is no more we could do to give the appellant a fair chance to make her case to us.
11. We were satisfied that the appellant had a fair opportunity to appear, there was no explanation for failure to appear or to communicate, and it was in the interests of justice to proceed with the hearing in her absence (and in absence of the sponsor) under rule 38.
12. Nothing has been heard from the appellant (or the sponsor) up to the time of completing this decision.
13. Mr Mullen submitted that the FtT failed to take account of the dearth of evidence from the appellant and of her sponsor's non-attendance. Her claim that her sponsor resided in the UK was unsupported. The outcome should have been to the contrary.
14. We reserved our decision.
15. We note that the appellant's form of appeal to the FtT ticked box "b" to indicate that her husband would be attending the hearing and at section 6 provided as his address not a place of residence but the office address of her former representatives, with their email address and telephone number.
16. We do not consider that Judge McTaggart was entitled to proceed on the basis that the ECO accepted that the sponsor has pre-settled status and lives in Edinburgh with their three children. There was a bare statement on an application form, but no supporting evidence. The ECO put the appellant to proof by refusing her application. The ECO's bundle states that this was her fourth such application. We do not have the terms of previous refusals, but it seems likely that the applicant had become familiar with the ECO's requirements. Judge McTaggart might have asked Mr Crosbie to advise what was accepted. It is hard to think that might have led to the appeal being conceded.
17. The Judge may have been right in his theory that the two questions and answers might be consistent with compliance with the rules; but to construe that into an

acceptance of such compliance was fanciful. It was contrary to the ECO's express position and the state of the evidence.

18. The grounds and the grant of permission make obvious points on the inferences which might be drawn from failure to provide any written evidence, and from the non-attendance of the sponsor.
19. The FtT overlooked the appellant's failure to provide evidence, documentary and oral, which should have been readily available to her to show that her sponsor resided in the UK. The finding that the ECO accepted that the state of affairs was in the appellant's favour was unsupported by the materials before the tribunal. Those two errors require the FtT's decision to be set aside.
20. The UT provides in its standard directions to parties and in its practice statement that on setting aside a decision of the FtT the UT is likely to proceed to remake the decision unless satisfied that the effect of an error has been to deprive an appellant of a fair hearing, which is not the case here, or there are other highly compelling reasons why the decision should not be remade by the UT. Such reasons are likely to be rare.
21. It is appropriate to proceed to remake this decision. There is no reason to delay, or to remit to the FtT.
22. The sponsor did nothing in the FtT to show that her sponsor is or was living in Edinburgh, by arranging for him to attend to give evidence or by producing some documentary record. Any shred of doubt is removed by her ongoing failure to engage with the proceedings and to provide evidence to support an outcome in her favour; which, if the situation is as she claims, should have been simple and straightforward.
23. The decision of the FtT having been set aside, the following decision is substituted: the appeal, as originally brought by the appellant to the FtT, is **dismissed**.
24. No anonymity order has been requested or made.

Hugh Macleman  
Judge of the Upper Tribunal, Immigration and Asylum Chamber  
13 February 2023