



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: UI-2022-002586**

Appeal

EA/10951/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 11 September 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**SUMAN RASHEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Lakhani of AKL Solicitors
For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

Heard at Field House on 30 August 2023

DECISION AND REASONS

1. This is an appeal against the decision dated 1 February 2022 of First-tier Tribunal Judge Plowright which refused the appeal of Mr Rasheed brought against a decision of the respondent dated 6 May 2021 which refused an application for a Family Permit under Appendix EU(FP) of the Immigration Rules.
2. The appellant was born on 17 September 1998 and is a citizen of Pakistan. On 1 February 2021 she applied for a Family Permit under the EU

Settlement Scheme set out in Appendix FM(FP) of the Immigration Rules. She applied on the basis that her brother was married to an EEA national and she was a dependent of that EEA national.

3. The First-tier Tribunal found that the appellant could not meet the definition of a family member as set out in Annex 1 to Appendix EU of the Immigration Rules; see paragraphs 14-16 of the decision. There is no challenge to that finding.
4. The First-tier Tribunal went on to consider whether the appellant met the provisions of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations) and Directive 2004/38/EC regarding extended family members (EFM) and could, as a result, seek to rely on Article 10(3) of the Withdrawal Agreement. The First-tier Tribunal found that the applicant did meet the definition of an extended family member as set out in the EEA Regulations; see paragraphs 22 to 32 of the decision.
5. The appeal was refused, however, as the First-tier Tribunal found that the appellant had not applied for facilitation of entry before the end of the transition period, that is, 31 December 2020; see paragraph 33 of the decision.
6. The appellant appealed the decision of the First-tier Tribunal on the sole ground that Judge Plowright had erred in finding that the appellant could not obtain the benefit of the Withdrawal Agreement because she only applied for entry clearance on 1 February 2021. Permission was granted on 7 May 2022.
7. The appellant sought to rely on the respondent's guidance to case workers on the EU Settlement Scheme. This document at page 32 referred to a deadline of 1 July 2021 for making an application to join an EEA national as an EFM. It was argued for the appellant that the First-tier Tribunal was wrong to find that she had to have made her application by 31 December 2020, therefore.
8. The case of Batool and others (other family members: EU exit) [2022] UKUT 219 (IAC) is a complete answer to this appeal. The headnote of Batool states:
 - “(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”.
9. The guidance relied on by the appellant sets out the deadline of 1 July 2021 for making an application. It does not set out the definition of when

someone can benefit from the Withdrawal Agreement. Those provisions are set out in Article 10 (3) of the Withdrawal Agreement and stipulate that an appellant must “have applied for facilitation of entry and residence before the end of the transition period”, that is, 31 December 2020. The appellant had made no application for her entry to be facilitated on any basis prior to 31 December 2020. Further, as set out in paragraph 54 of Batool, even if the appellant had applied for entry clearance prior to 31 December 2020 at no time had she been “the beneficiary of a positive exercise of discretion, recognised by the grant of residence documentation”.

10. The First-tier Tribunal found only that the appellant was out of time and as a result of that could not benefit from the Withdrawal Agreement. That reasoning was not correct, as clarified in Batool. The error cannot be material, however, where the appellant could not have qualified for entry clearance for the reasons set out in the previous paragraph. The appeal would also have had to have been dismissed even if the First-tier Tribunal had raised this issue with the parties at the hearing. I did not find that to be a procedural error, in any event, where the First-tier Tribunal was clearly asked to decide whether the appellant could benefit from the Withdrawal Agreement.

Notice of Decision

11. The decision of the First-Tier Tribunal does not disclose a material error of law and shall stand.

Signed: S Pitt
Upper Tribunal Judge Pitt

Dated: 30 August 2023