



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

Case No: UI-2022-005167

First-tier Tribunal No: EA/09813/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 25 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**ADEEL EHSAN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Slatter, instructed by Bhogal Partners Solicitors  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 13 April 2023**

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan. His date of birth is 5 July 1986.
2. The Appellant was granted permission by Upper Tribunal Judge Macleman on 10 February 2023 to appeal against the decision of the First-tier Tribunal (Judge Fox) to dismiss his appeal against the decision of the ECO on 6 May 2021 to refuse his application under the EU Settlement Scheme (EUSS) for a family permit. The application was made on 23 December 2020.
3. The ECO refused the application because the Appellant did not meet the requirements of the Immigration (European Economic Area) Regulations 2016. The Appellant made an application on the basis that he is dependent on his sister-in-law in the UK who is a Polish national exercising treaty rights. The ECO was of the view that there was insufficient evidence to establish financial

dependency and there was insufficient evidence regarding the Appellant's circumstances generally.

4. The appeal came before Judge Fox. The Appellant's brother and the Sponsor attended the hearing. They gave evidence adopting their witness statements as evidence-in-chief.
5. I do not need to say too very much about the decision of Judge Fox because the SSHD conceded that the Judge materially erred on fairness grounds. The SSHD did not oppose the Appellant's application for permission to appeal on the basis of the grant of permission. It was conceded that there was unfairness for the reasons identified by Judge Macleman. He said that it was arguable that "the Judge's points went beyond what might reasonably have been anticipated, to the stage of unfairness". Judge Macleman also found it to be arguable that "the Judge implicitly set the level of dependency above the terms of case law and the respondent's policy".
6. The judge made a number of findings at paragraphs 13-22 of the decision. I agree with the parties that the judge raised issues that were not relied on by the SSHD without giving the Appellant an opportunity to respond.
7. The parties agreed that there was a material error of law. I agreed with the parties that as a result of the nature of the error, considering Begum (remaking or remittal) Bangladesh [2023] UKUT 46, it was appropriate for the matter to be remitted to the First-tier Tribunal for a fresh hearing.

**Joanna McWilliam**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**31 July 2023**