



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

**Case No: UI-2022-005863**  
**First-tier Tribunal No:**  
**EA/08323/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 10 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Yasmeen Wazir**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Badar, Counsel instructed by Abbott Solicitors  
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**Heard at Field House on 16 June 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of citizen of Afghanistan who applied for a family permit under the Immigration (EEA Regulations) 2016 to join her brother (“the sponsor”) in the UK. The application was refused as the respondent did not accept that the sponsor was exercising treaty rights or that the appellant was dependent on him for her essential needs.
2. The appellant appealed to the First-tier Tribunal where her appeal came before Judge of the First-tier Tribunal Thapar (“the judge”). In a decision promulgated on 6 January 2022 the judge dismissed the appeal on the basis that the appellant had not established that the sponsor has been exercising treaty rights in accordance with the 2016 Regulations.
3. The central argument advanced in the grounds is that the judge failed to consider that, as is evident from the appellant’s bank statements, the appellant received a grant of £1,647 from HMRC in May 2020 under a scheme whereby grants were made to self-employed individuals (“the HMRC grant”).

4. Ms Everett conceded that it was an error to not consider the HMRC grant as it is relevant to the question of whether the sponsor has been exercising treaty rights. Ms Everett accepted that this error was material such that the decision could not stand. However, she made clear that she was not accepting that receiving the HMRC grant necessarily establishes that the appellant was exercising treaty rights: the error was the failure to consider the issue.
5. I sought submissions from Mr Badar and Ms Everett on whether the appeal should remain in the Upper Tribunal or be remitted to the First-tier Tribunal. Having considered their submissions, and the principles considered in *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46 (IAC) I consider remittal to the First-tier Tribunal appropriate. This is because the judge did not engage with, or make any findings of fact in respect of, the issue of whether the appellant is dependent on the sponsor and there has not been any judicial consideration yet of this highly fact sensitive issue. The consequence of this is that (a) extensive fact-finding is likely to be needed, and (b) the appellant should not, in my view, lose the benefit of the two tier decision-making process given that a central issue in the appeal has not yet had any judicial consideration.
6. I do not propose to give any directions in respect of the remaking of the decision but make the observation that it is unclear from the evidence that was before the First-tier Tribunal what the requirements for the HMRC grant were. A judge remaking this decision is unlikely to place significant weight on the HMRC grant unless the appellant provides the documentation that he submitted to HMRC to obtain it as well as other information about what the HMRC grant entails. The judge refers in the decision to other relatives of the sponsor being granted entry. If the appellant intends to rely on this to assist her, she should provide the evidence submitted in these applications as well as the relevant decisions.

**Notice of decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**27 June 2023**