



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003381

First-tier Tribunal No: EA/14968/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

31st October 2023

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

MADHAVAN RAMAIYAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Norman, instructed by Masters Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 13th October 2023

DECISION AND REASONS

1. The Appellant is an Indian national born on 10 October 1993. He appeals against the decision of First-tier Tribunal Judge Gillespie ('the judge') promulgated on 25 November 2022 dismissing his appeal against the refusal of pre-settled status under the EU Settlement Scheme ('EUSS').
2. The Appellant made his application on 24 June 2021 and the Respondent refused it under Appendix EU on 17 October 2021 on the grounds that the Appellant did not have a relevant document.

The Judge's Decision

3. At the hearing before the First-tier Tribunal, the Appellant attended in person and the Respondent was not represented. The Appellant applied for an adjournment because the EEA Sponsor had prepared the papers and was unable to attend. The Sponsor was in India visiting his mother after Covid and he was unable to return to the UK in time for the hearing.
4. The judge refused the application because notice of hearing was served on 19 August 2022 and the Appellant had had plenty of time to instruct a lawyer and prepare for the hearing on 17 November 2022. The judge considered the overriding objective and the lack of evidence to support the application. The judge proceeded with the hearing in the absence of the Sponsor and the Respondent.
5. The judge went on to dismiss the appeal and found that the Appellant had failed to engage with the Respondent's decision or otherwise prove, on the balance of probabilities, that the Appellant was entitled to succeed on his application under the EUSS.

The Grounds of Appeal

6. The Appellant appealed on two grounds. Firstly, the refusal of an adjournment was arguably unfair. The Appellant had applied on 15 November 2022 to adjourn the hearing because his uncle was stuck in India and he had been unable to secure legal representation in order to properly prepare for the hearing on 17 November 2022. The Appellant was not represented before the First-tier Tribunal. The refusal to adjourn was unfair because the Sponsor was a vital witness and had assisted in preparing the appeal.
7. Secondly, the judge failed to provide reasons for dismissing the appeal. The judge failed to set out the applicable law and engage with the evidence before him. There was ample evidence of dependency and the Appellant also relied on Article 8. Following Celik v Secretary of State for the Home Department [2022] UKUT [2020] (IAC) and Batool v Entry Clearance Officer [2022] UKUT [2019] (IAC) there were complex legal issues to be considered in this appeal. It was noted in the grounds of appeal that there was an application for permission to appeal to the Court of Appeal in respect of these two cases.
8. First-tier Tribunal Judge Parkes granted permission to appeal on both grounds on 16 January 2023, stating that it was arguable the judge had failed to give adequate reasons for dismissing the appeal.
9. In the Rule 24 response, the Respondent resisted the first ground of appeal and submitted there was no error of law in refusing the application for an adjournment. The judge had given adequate reasons and there was no procedural unfairness. The Respondent accepted the judge materially erred in law in failing to give adequate reasons for dismissing the appeal and submitted the appeal should be remitted to the First-tier Tribunal. This concession was made only in respect of the second ground.

Submissions

10. Ms Norman accepted the Appellant did not have a relevant document under Appendix EU. In summary, she submitted the refusal to adjourn was unfair in the circumstances because the Appellant had been deprived of the opportunity to obtain legal representation to put forward his Article 8 claim and seek consent from the Respondent. The refusal of the adjournment was procedurally unfair and inadequately reasoned.

11. Ms Ahmed submitted the refusal to adjourn was not unfair on a proper application of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). She submitted the Appellant had not raised Article 8 in his application under the EUSS and no section 120 notice was served. This was a new matter and the Respondent had not given consent. She applied to withdraw the concession in respect of the second ground.

Conclusions and Reasons

12. It is not in dispute that the Appellant applied under the EUSS for pre-settled status and the Respondent considered the application under the EUSS. The application was refused because the Appellant did not have a relevant document, i.e. a valid family permit or residence card issued under the Immigration (EEA) Regulations 2016. There was no evidence in the bundle before the First-tier Tribunal that the Appellant held a relevant document and it was accepted at the hearing before us that the Appellant does not have a relevant document.
13. Permission to appeal to the Court of Appeal was refused in Batool, in which the Upper Tribunal held:
 - “(1) An extended 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.”
14. We find there was insufficient evidence before the judge to show the Appellant’s residence in the UK was facilitated prior to 31 December 2020. We accept the judge’s decision promulgated on 25 November 2020 lacks adequate reasons but we find that any lack of reasoning was not material to the decision to dismiss the appeal because on the facts pleaded by the Appellant he cannot satisfy the requirements of Appendix EU.
15. Following Batool and Celik v SSHD [2023] EWCA Civ 921, the Appellant cannot rely on the Withdrawal Agreement and his appeal cannot succeed under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020. We do not accept the Respondent’s concession in the Rule 24 response. We find there was no material error of law in the judge’s decision to dismiss the appeal.
16. We also find that there was no procedural unfairness. The judge gave adequate reasons for refusing the adjournment and, applying Nwaigwe, the refusal of the application to adjourn was not unfair. In the circumstances, the Sponsor was not a vital witness. It is accepted the Appellant does not have a relevant document. The Appellant was given ample opportunity to seek legal representation and failed to do so.
17. The Appellant did not make a human rights claim. There was a bare assertion in the grounds of appeal to the First-tier Tribunal that the Respondent’s decision was unlawful under Section 6 of the Human Rights Act.
18. In any event, Article 8 is a new matter to which the Respondent did not consent. There was no material error of law in the judge’s failure to consider Article 8 following Celik.

19. The Appellant was represented before us and Ms Norman quite properly did not argue that the Immigration (EEA) Regulations 2016 applied following Siddiqi (other family members: EU exit) Bangladesh [2023] UKUT 47 (IAC) or that the Appellant could benefit from the grace period because the Sponsor has leave to remain under the EUSS.
20. Having considered all the evidence and the submissions by both parties we find there is no material error of law in the judge's decision to dismiss the appeal promulgated on 25 November 2022. We therefore dismiss the Appellant's appeal.

Notice of Decision

Appeal dismissed

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 October 2023