



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

Case No: UI-2022-002920

First-tier Tribunal No:
EA/01574/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of September 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**HAZANFAR HUSSAIN
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Thompson, Senior Presenting Officer

For the Respondent: Mr Ahmed, Counsel instructed on behalf of the respondent

Heard at Phoenix House (Bradford) on 18 September 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Moran) (hereinafter referred to as the "FtTJ") who allowed the appeal against the decision made to refuse his application made under the EU Settlement Scheme in a decision promulgated on 25 April 2022.
2. The FtTJ did not make an anonymity order, and no grounds were submitted during the hearing for such an order to be made.

3. Although the appellant in these proceedings is the Secretary of State, for convenience I will refer to the Secretary of State for the Home Department as the respondent and to the appellant before the FtT as “the appellant,” thus reflecting their positions before the First-tier Tribunal.
4. The background to the appeal is set out in the evidence and in the decision of the FtTJ. The FtTJ recited the appellant’s immigration history which had not been in dispute as follows.
5. On 3 June 2021 he made an application under the EU Settlement Scheme (“EUSS”) relying upon his relationship with his brother, a Swedish national. His application was refused in a decision made on 17 October 2021. The refusal letter stated that insufficient evidence had been provided to prove that he was a durable family member of a relevant EEA Citizen. The letter also stated that the required evidence of the family relationship and not been provided. As the FtTJ observed, it is entirely unclear why the application was treated as an application made by a durable family member as there is nothing in the application to indicate it was such an application. In fact this was an application which stated that the appellant was in the UK before 31 December 2020 was applying on the basis of his relationship with his brother who lived in the UK. The appellant had previously been accepted as a family member when he was issued with a family permit and that he is dependent on his brother. The appellant was granted a family permit under the EEA Regulations and came to the UK on 20 January 2020; the permit records “ to join TH Syed”. It is said that he received money from his brother directly to his bank account. His brother received pre- settled status in May 2019.
6. The FtTJ set out the evidence given by the appellant and his witness in the decision between paragraphs 8-9. The respondent had not attended the hearing and there had been no response to the skeleton argument provided on behalf of the appellant. In his assessment of the appeal, the FtTJ set out that the evidence before the Tribunal persuaded him that the appellant and the EEA national were brothers, as indicated by the family permit that was issued previously. The judge also set out that he accepted the evidence of both the appellant and his brother and that his brother had been supporting the appellant financially continuously since he lost his employment about 5 years ago. The judge also found the dependency the appellant had in Pakistan must have been proved in order for the family permit to have been issued and he also accepted it had been proved that since he came to the UK the appellant had been continuously dependent on his brother. The judge found those facts to be proved on the balance of probabilities (see paragraph 14). The FtTJ therefore allowed the appeal.
7. The respondent sought permission to appeal and permission to appeal was granted by FtTJ Singer. Following the grant of permission, the appeal was stayed to await the outcome of the decision of the Court of Appeal in Celik and thereafter on 6 November 2023, the appeal was

stayed to await the outcome of the decision in Vasa and Hasanaj v SSHD [2024] EWCA Civ 777. That decision was promulgated on 10 July 2024 and following this rule 24 response was provided on behalf of the appellant by his solicitors.

8. The appeal was therefore listed before the Upper Tribunal. Mr Ahmed appeared on behalf of the appellant and Mr Thompson, Senior Presenting Officer appeared on behalf of the respondent. Mr Thompson indicated that whilst the decision in Vasa did not involve the same factual basis, there being stamps from the immigration officer, he accepted on behalf of the Secretary of State that the appellant had entered the UK having been issued with a family permit under the EEA Regulations and therefore the respondent accepted that he was a person whose residence was facilitated by the family permit under Article 10(2) of the Withdrawal Agreement and therefore the refusal did involve a breach of his rights under the Withdrawal Agreement. Thus he invited the Tribunal to dismiss the appeal of the Secretary of State and to uphold the decision of the FtTJ to allow the appeal. Mr Ahmed was in agreement with that course and invited the Tribunal to dismiss the Secretary of State's appeal and to uphold the decision of the FtTJ to allow the appeal.
9. In the circumstances the respondent has indicated that she concedes that the appeal against the decision of FtTJ Moran should be dismissed and that the appeal should be allowed on the basis that is set out above. This is because the appellant did fall within the scope of the Withdrawal Agreement . Consequently, the decision of the First-tier Tribunal did not involve the making of an error of law and the decision of the FtTJ allowing the appeal stands on the basis under the Immigration (Citizen's Rights Appeals) (EU Exit) Regulations 2020 that the decision was contrary to the appellant's rights under the Withdrawal agreement.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and the decision of the FtTJ allowing the appeal stands.

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds
18 September 2024

18/9/24