



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000269
First-tier Tribunal No:
EA/11733/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

Entry Clearance Officer

Appellant

and

Farida Zozai

Respondent

Representation:

For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Mr A Eaton, Counsel instructed by Times PBS Ltd

Heard at Field House on 8 March 2024

DECISION AND REASONS

1. The Respondent is a national of Afghanistan born on the 28th August 1987. On the 12th October 2023 the First-tier Tribunal (Judge Bart-Stewart) allowed her appeal against a decision to refuse to grant her a family permit under the European Union Settlement Scheme. The Entry Clearance Officer now has permission to appeal against that decision.
2. The facts of this case are simple. The Respondent is the wife of a Mr Ziauden Zozai, a British national of Afghan origin. Mr Zozai was naturalised as a British national in 2007 and shortly thereafter married the Respondent in a ceremony in Afghanistan. She has remained in Afghanistan throughout their marriage, and he has lived in the United Kingdom. Their relationship has been maintained through

frequent visits by him to Afghanistan and together they have four children. The children were born, respectively, in 2009, 2015 (twins) and 2018. They are, it is accepted, all British nationals by virtue of their father's status at the date of their births.

3. On the 22nd July 2023 the Respondent made an application under the EU Settlement Scheme, to join her husband (and children) in the UK. That application was refused, the Appellant appealed and on the 8th September 2023 the matter came before Judge Bart-Stewart.
4. Judge Bart-Stewart allowed the appeal.
5. The Entry Clearance Officer now appeals on the grounds that the legal basis for the First-tier Tribunal's decision is unclear. Although there is reference to a 'concession' concerning the *Zambrano* route, it is not explained what that concession actually was, or why it would benefit the Respondent. Before us Mr Eaton accepted that the legal basis for the decision was not explained and in those circumstances he could not realistically defend it. He invited us to set the decision aside and to remit the matter to the First-tier Tribunal. Relevant to the question of remittal was the fact that the Respondent currently has another appeal pending, on human rights grounds, below. Mr Eaton very sensibly suggested that these two matters be joined.
6. There remains an issue about whether the First-tier Tribunal had jurisdiction to make the decision at all. The ECO had argued that the application had not been refused, rather it had been rejected as invalid. In those circumstances there was not an EUSS decision to appeal. Judge Bart-Stewart resolved that issue in favour of the Respondent, and her decision to do so was not challenged in the grounds to this Tribunal, so we say nothing more about it. Whether the ECO wishes to revive this argument when the appeal is heard *de novo* is a matter for him.

Decisions and Directions

7. The decision of the First-tier Tribunal is set aside.
8. The decision in the appeal will be remade following a *de novo* hearing in the First-tier Tribunal by a Judge other than Judge Bart-Stewart.
9. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
8th March 2024