



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004178

First-tier Tribunal No: EA/06161/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 December 2024

Before

UPPER TRIBUNAL JUDGE LODATO
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

[Z A]
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Dr Ibisi, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 3 December 2024

DECISION AND REASONS

Background

1. The broad factual background and immigration history is not in dispute between the parties.
2. The appellant is a citizen of Pakistan who applied on 13th January 2021 for a Family Permit Visa under Appendix EU Settlement Scheme to the Immigration Rules.
3. Her application was refused on 29th January 2021 because the appellant had not shown sufficient evidence of dependency upon her sponsor and so did not meet the specific requirement of Appendix EU (Family Permit) to the Immigration Rules.
4. Thereafter the appellant applied for a visa to study in the UK. Her application was granted and she entered the UK on 11th October 2023.

5. The appeal came before First-tier Tribunal Judge McClure ('the Judge') on 26th June 2024. The Judge's decision and reasons were promulgated on 12th July 2024.
6. The Judge found that the appellant was dependent upon her sponsor and that the appellant met the Immigration Rules [23].
7. Despite his finding of dependency, the Judge directed that the appellant's appeal be treated as withdrawn. The judge found that the appellant's right of appeal was derived from s82 the Nationality, Asylum and Immigration Act 2002 ('The Act') [24]. An appeal brought under the s.82 of the Act may be treated as withdrawn under section 104 of the Act in circumstances where the applicant (as she was here) is granted entry clearance before the determination of their appeal.
8. The decision as to whether the judge could or should treat the appeal as abandoned was not a matter raised with the parties at the hearing before the First-Tier Tribunal.

Appeal to the Upper Tribunal

9. The appellant was granted permission to appeal in reliance on the following grounds:
 - i. Ground 1 - the judge erred in failing to give the parties an opportunity to address him on the legality of the claimed abandonment of the appeal.
 - ii. Ground 2 - the judge misdirected himself as to the statutory provisions of abandonment.
10. At the error of law hearing, Dr Ibisi for the respondent conceded that the decision involved an error of law. It was common ground between the parties that the appropriate disposal was for us to remake the decision and allow the appeal.

Discussion

11. Regulation 5 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ('the Regulations'), provides the right of appeal against decisions made in connection with European Union Settlement Scheme entry clearance decisions. Both parties agree that the Regulations were the statutory basis for the appellant's appeal to the First-tier Tribunal.
12. Regulation 13 provides:

...

 - (3) An appeal under Regulations 3 to 6 is to be treated as abandoned if the appellant ("A") is granted leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules.
 - (4) But paragraph (3) does not apply where—
 - (a) A is not granted indefinite leave to enter or remain in the United Kingdom, or A's Indefinite leave to enter or remain in the United Kingdom is cancelled or revoked, and

- (b) A gives notice, in accordance with the relevant rules, that A wishes to pursue the appeal insofar as it relates to a decision not to grant A, or to cancel or revoke A's, indefinite leave to enter or remain in the United Kingdom.
13. The instant appeal would only fall to be treated as abandoned if the appellant was granted leave to enter or remain in the United Kingdom by virtue of the residence scheme Immigration Rules. As the grant of leave held by the appellant was not under EUSS-residence scheme Immigration Rules, the appeal remained extant.
 14. The Upper Tribunal is not bound by the respondent's concession that the decision involved a material error of law. However, the fact that there is no dispute between the parties necessarily functions as an important factor in the assessment of whether the judge's decision involved an error in law. We accept the respondent's concession.
 15. The Judge erred in treating the appellant's appeal as being brought under the Act rather than the Regulations. The abandonment provisions in section 104 of the Act had no relevance to this appeal. The judge misdirected himself as to the statutory provisions of abandonment.
 16. For the reasons set out above, it is unnecessary to consider Ground 1, above.

Notice of Decision

The decision of the judge involved a material error of law. We set aside the decision of Judge McClure dated 12th July 2024. We remake the decision by allowing the appeal.

Paul Lewis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 December 2024