



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000903
[EA/03554/2021]**

UI-2022-000904 [EA/03556/2021]

UI-2022-000905 [EA/03560/2021]

UI-2022-000906 [EA/03564/2021]

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On Friday 14 October 2022**

**Decision & Reasons Promulgated
On Wednesday 09 November 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MRS TASLEEM AKHTAR

MR ANSAR ALI

TA

HF

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr Khan, Solicitor Advocate, Parkview Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants appeal against the decision of the First-tier Tribunal Judge S J Clarke promulgated on 8 October 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellants’ appeals against the Respondent’s decisions dated 13 March 2021 refusing their applications for entry clearance under the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”) to join their EEA national (Spanish) sponsor, Mr Muhammad (“the Sponsor”), as extended family members. The First Appellant claims to be the sister of the Sponsor. The remaining Appellants are her husband and children. Although the EEA Regulations have since been repealed, these appeals remain valid under transitional provisions.
2. The Respondent refused the applications on the basis that she was not satisfied that the Appellants were related to the Sponsor as claimed and nor was she satisfied that they were financially dependent on him.
3. The Judge similarly rejected the Appellants’ claim to be related as claimed ([10] of the Decision) and also rejected the evidence as to dependency and maintenance in the UK if the Appellants were admitted here ([11] and [14] of the Decision).
4. The Appellants appealed the Decision on three grounds:
Ground (1): The Judge misdirected herself in law and failed to engage with the evidence as to relationship and dependency.
Ground (2): The Judge failed to take into account the facts as at date of appeal hearing (relying on SGC and Others (EEA – Date of Decision – 1999 Act) Ireland [2005] UKAIT 00179).
Ground (3): The Judge failed to provide adequate reasons for rejecting the claim of dependency and availability of maintenance in the UK (relying on Lim v Entry Clearance Officer, Manila [2015] EWCA Civ 1383).
5. Permission to appeal was refused by First-tier Tribunal Judge Aldridge on 1 December 2021 in the following terms so far as relevant:
 - “... 2. The grounds are wholly without merit. The Judge clearly and demonstrably considered all of the evidence that had been submitted by the Appellant and, properly, made findings in respect of it. These findings are adequately reasoned and based on all of the evidence available to the tribunal. The Judge provided explanation of the findings, in particular, in respect of the question of the relationship between the parties, weight to be given to documents, dependency and credibility. The judge was entitled to make her findings and did so in a reasoned manner considering the evidence in the round.
 3. The grounds disclose no error of law.”
6. However, following renewal of the application for permission to appeal to this Tribunal, permission was granted by Upper Tribunal Judge Grubb on 20 May 2022 for the following reasons so far as relevant:

“... 3. Ground (1) is arguable on the basis that the judge failed to consider properly or at all documents such as birth certificates of the sponsor and A1 in the bundle. Ground (2) is also arguable. Overall, it is arguable the judge failed to give due consideration to documents in the appellants’ bundles as they were submitted late. The judge appears to have focussed on what was, or was not, submitted in an earlier application/appeal involving an application by another individual to join the sponsor.

4. Ground (3) is not only arguable, in my view it is correct. The judge was wrong to require continuing dependency/accommodation once the appellants were in the UK. The only issue in a family permit case was ‘dependency’ in Pakistan. However, the error would not be material to the outcome of the appeal if the judge’s other findings – on the family relationship and dependency in Pakistan – are sustainable.

5. For those reasons, permission to appeal is granted.”

7. The matter came before me to determine whether the Decision contains an error of law and, if I so conclude, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal.
8. Although the Respondent filed a Rule 24 response dated 27 July 2022 seeking to uphold the Decision, I was informed at the start of the hearing that Mr Tan for the Respondent conceded that there was an error of law in the Decision.
9. Mr Tan confirmed that the Respondent conceded that there was an error of law in particular in relation to grounds one and two by the Judge’s failure to assess or comment on the documents before her. The Judge had not engaged with the substantial documentation which had been filed by the Appellants after the date of the application and the Respondent’s decision but prior to the Decision. That failure was accepted to “taint” the Judge’s assessment of the claimed relationship and dependency.
10. I accepted the Respondent’s concession and confirmed therefore that the Decision contained an error of law and should be set aside. Both parties agreed that thereafter it was necessary for the appeals to be remitted to the First-tier Tribunal for hearing afresh. I agree with that course of action. All issues require to be redetermined.
11. I indicated that I would confirm my decision with reasons in writing as I have done above.

CONCLUSION

12. The Decision contains errors of law. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge S J Clarke and Judge Handler (who heard an earlier appeal by the same Appellants). No findings are preserved.

DECISION

The Decision of First-tier Tribunal Judge S J Clarke involves the making of material errors on a point of law. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for hearing before a Judge other than Judge S J Clarke and Judge Handler.

Signed L K Smith
Upper Tribunal Judge Smith

Dated: 14 October 2022