



**Upper Tribunal  
(Immigration and Asylum  
Chamber)**

**Appeal Number: UI-2022-002789**  
on appeal from EA/09129/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 October 2022**

**Decision & Reasons Promulgated  
On 11 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**FAWAD MURTAZA  
[NO ANONYMITY ORDER]**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

Representation:

For the appellant: Saadia Aftab, sponsor, assisted by Noora Shah, a McKenzie friend

For the respondent: Mr Steven Walker, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 28 March 2021 to refuse him leave to enter the UK and to refuse to issue an EU Settlement Scheme (EUSS) Family Permit pursuant to Appendix EU of the Immigration Rules HC 395 (as amended).

## **Background**

2. The appellant is a citizen of Pakistan. He appellant seeks to join his sister Saadia Aftab in the UK, who is a French national exercising Treaty rights here.
3. There was evidence of remittances by Ms Aftab to the appellant. The evidence of dependency was arguably insufficient but for the reasons we now set out, that is not determinative of the appellant's appeal.
4. The application was made on 20 December 2020. The respondent on 28 March 2021 refused entry clearance because siblings do not come within the definition of family member of an EEA citizen in Appendix EU (Family Permit). That definition was restricted to spouses, civil partners, durable partners, and dependent ascendant and descendant relatives.
5. The appellant appealed to the First-tier Tribunal.

## **First-tier Tribunal decision**

6. The appellant appealed to the First-tier Tribunal. The appeal was decided on the papers, at the appellant's election. That was open to him, of course, but it meant that there was no opportunity for the sponsor or a representative to assist the First-tier Tribunal with any points of concern.
7. First-tier Judge Austin accepted that the sponsor is his real sister. However, she found that the appellant did not qualify as a family member of a relevant EEA citizen. She dismissed the appeal.
8. The appellant appealed to the Upper Tribunal.

## **Permission to appeal**

9. Permission to appeal was granted by Judge O'Garro on the basis that the First-tier Judge had failed to consider and apply Article 10(3) of the Withdrawal Agreement along with the respondent's EU Settlement Scheme Family Permit and Travel Permit (dated 24 March 2022): the appellant had applied prior to 31 December 2020 and was the brother of a relevant EEA national.

## **Rule 24 Reply**

10. In her Rule 24 Reply, the respondent observed that the appellant could not bring himself within the definition of 'family member' in Article 10 of the Withdrawal Agreement.
11. The appellant was not a person to whom Article 10(2) of the Agreement applied: he could not show that his residence was facilitated by the UK by the issue of a residence document prior to the end of the transition period at 11 p.m. on 31 December 2020. He was still in Pakistan then.

12. Nor had the appellant successfully applied for facilitation by the UK of entry and residence before the end of the transition period, as Article 10(3) required. On the contrary, his application had been unsuccessful.
13. The appellant's submission that he was entitled to rely on the Immigration (European Economic Area) Regulations 2016 (as saved) was also erroneous: no application had been made thereunder before the end of the transition period, and after 31 December 2020, they no longer applied.
14. The First-tier Tribunal decision was sound in law and should be upheld.
15. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

16. At the Upper Tribunal hearing, the sponsor appeared, with the help of her McKenzie friend.
17. She told the Tribunal that the appellant was indeed dependent upon her, and stated that sufficient evidence of dependency had been produced. She had provided his birth certificate and demonstrated that she had a stable financial position, such that she could afford to support him.

### **Analysis**

18. Unfortunately, the evidence of support, even if it were sufficient, is not determinative of this appeal. The appellant cannot bring himself within either Article 10(2) or 10(3) of the Withdrawal Agreement, or the definition of a family member in Annex 1 to Appendix EU.
19. Accordingly, there is no error of law in the decision of the First-tier Tribunal, which we uphold.

### **DECISION**

20. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

We do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
2022

Date: 2 November

Upper Tribunal Judge Gleeson