



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

Appeal Numbers: UI-2022-002389
UI-2022-002390 & UI-2022-002391
[EA/12955/2021, EA/12620/2021 & EA/12730/2021]

THE IMMIGRATION ACTS

**Heard at Field House
On 9 September 2022**

**Decision & Reasons Promulgated
On 3 November 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**FELICIA BOAHEMAA
CONSTANCE MAABEA
SILAS ANING
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, instructed by M & K Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are siblings who appealed to the First-tier Tribunal against a decision of the Secretary of State refusing to issue them with family permits under the EU Settlement Scheme. The first appellant's refusal was dated 27 July 2021 and the refusal of the second and third appellants was dated 28 July 2021.

2. As can be seen from paragraph 25 of the judge's decision, Mr Dhanji, who also appeared below, very properly conceded on behalf of the appellants that they could not succeed in their appeal under Regulation 8(3) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. This was because as they are the nieces and nephew of the sponsor they do not fall within one of the categories of "family member" as defined in Appendix EU (Family Permit) to the Immigration Rules.
3. It was argued before the judge that the issue was whether the decisions made by the respondent breached the Withdrawal Agreement itself. Reliance was placed by Mr Dhanji on Article 18(1)(r), which, it was argued, enabled the appellants to have the right to judicial consideration of the proportionality of the decision refusing a residence card and as they were dependent on their uncle and would have been previously entitled to a residence card under the 2016 Regulations, the Tribunal could take this into consideration when determining the proportionality of the decision.
4. The judge concluded that the consideration of proportionality was not a freestanding right nor did it allow the Tribunal to disregard the provisions of the Withdrawal Agreement. He set out in careful detail the relevant provisions and his consideration of whether the case fell within those provisions and concluded that by reason of Articles 9, 10 and 13 the appellants were not entitled to reside in the United Kingdom under the provisions of Chapter 1 of the Withdrawal Agreement. Though Articles 18(1)(b), (c) and (d) made express provision for dealing with applications submitted after the end of the transition period, none of them covered the appellants' particular circumstances. They were not residing in the United Kingdom at the time of their application, nor did they have a right to commence residing in the UK after the end of the transition period. He was satisfied on balance that for all the reasons set out the appellants had not shown that they were entitled to a right of residence under Chapter 1 of the Withdrawal Agreement and therefore the decision refusing to issue a residence card was not disproportionate and the refusals did not amount to a breach of the Withdrawal Agreement.
5. The appellants sought and were granted permission to appeal, on the basis that it was said to be arguable that the judge might have erred in his approach to whether the Withdrawal Agreement was engaged and whether the appellants had rights under it.
6. Mr Dhanji said that he was instructed to pursue the argument raised in the grounds, but he recognised the relevance to the issue of the decision of the Upper Tribunal in Batool [2022] UKUT 00219 (IAC). In the circumstances, he relied on the grounds and asked the Tribunal to consider them.
7. In his submissions Mr Walker argued simply that the judge had come to the correct decision.
8. I reserved my decision.

9. It is clear from the headnote to Batool that an extended family member whose entry and residence was not being facilitated by the United Kingdom before 11pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the Immigration Rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. It is also said in the second headnote that such a person has no right to have any application they have made for settlement as a family member treated as an application for facilitation and residence as an extended/other family member.
10. I am entirely satisfied that the reasoning in Batool is sound and that it is applicable directly to the facts of the appeal before me. As a consequence, I consider that it has not been shown that the judge erred in law in any respect and his decision dismissing these appeals is maintained.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.



Signed

Date 22 September 2022

Upper Tribunal Judge Allen