



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

Appeal Number: UI-2022-003411  
EA/15906/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 September 2022**

**Decision & Reasons Promulgated  
On 27 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BRUNILDA MUSAJ**

(anonymity direction not made)

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Home Office Presenting Officer

For the Respondent: Mr A Stedman, Counsel instructed by SMA Solicitors

**DECISION AND REASONS**

(extempore judgement)

1. This is an appeal brought by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State refusing her an EUSS Family Permit.
2. Unlike the First-tier Tribunal, I had the benefit of grounds of appeal settled by Mr Peter Deller of the Specialist Appeals Team who, with his usual clarity and attention to detail, asserting that the appeal should have been

dismissed because the applicant did not have the necessary card which was a prerequisite of satisfying the requirements of the Rules.

3. Mr Clarke adopted Mr Deller's arguments.
4. This point has been considered by the Upper Tribunal in the case of **Batool & Ors (other family members: EU exit) [2022] UKUT 00219 (IAC)**. This decision gives considerable judicial authority from this Tribunal for the analysis urged by Mr Deller.
5. The short point is that the application cannot possibly succeed and therefore the judge was wrong to allow the appeal. I set aside the decision of the First-tier Tribunal and I substitute an appeal dismissing the appeal against the Secretary of State's decision.
6. I am very grateful to Mr Stedman this morning. He was Counsel below but now had the benefit of **Batool** and although he has given that case considerable care it was his professional judgment this morning that his position was unarguable and, in the best traditions of the Bar, did not waste my time flogging a dead horse but accepted the difficulty he was in and for that entirely correct approach I record my gratitude.
7. The appeal should have been dismissed. I allow the Secretary of State's appeal against the First-tier Tribunal's decision and I dismiss the claimant's appeal against the refusal of the permit. That is my decision.

### **Notice of Decision**

8. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the claimant's appeal against the First-tier Tribunal's decision.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 21 October 2022