



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

**Appeal Numbers:  
UI-2021-001417; HU/08765/2020  
UI-2021-001418; HU/08766/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 13<sup>th</sup> January 2023**

**Decision & Reasons Promulgated  
On the 18<sup>th</sup> January 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**QAISAR ALI  
ZAHIDA PARVEEN**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr M Nadeem of City Law Immigration Ltd

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are nationals of Pakistan, born on 2 November 1984 and 1 January 1965 respectively. The second appellant is the mother of the first appellant and the EEA national sponsor, Mudassar Ali Parveen, who are brothers. They appeal, with permission, against the decision of First-tier Tribunal Judge Clarke promulgated on 4 October 2021, in relation to their

applications for family permits under the Immigration (European Economic Area) Regulations 2016 as the extended family members of the sponsor, a Spanish national exercising Treaty rights in the UK.

2. This appeal is complicated by the fact that the status of the second appellant's appeal before the First-tier Tribunal was not resolved by Judge Clarke following confirmation that she had been granted a family permit prior to the hearing and has since entered the UK.

3. The appellants applied for family permits on 29 October 2020/ 2 November 2020 to join the EEA national sponsor in the UK and their applications were refused on 17 November 2020 in similar terms, on the basis that the respondent was not satisfied that they had shown that they were financially dependent upon the sponsor. The respondent considered that the limited evidence, consisting of four money transfer remittance receipts, was not sufficient to prove that they were financially dependent upon the sponsor. The respondent also noted, following checks with the Pakistan Government, that the first appellant was economically active in Pakistan and was subject to income tax and considered that any funds he received from the sponsor were likely to enhance his household income rather than meet his essential needs. The respondent was therefore not satisfied that the appellants had shown that they were the extended family members of an EEA national in accordance with Regulation 8 of the EEA Regulations 2016.

4. The appellants appealed against the decision and their appeals initially came before First-tier Tribunal Judge Gribble, who adjourned the hearing because it was claimed by the appellants' representative that the second appellant, Mrs Parveen, had been granted a settlement visa, but there was no evidence of that available. The matter then came before Judge Clarke on 28 September 2021 where, following enquiries by counsel for the respondent, evidence was produced of the second appellant's passport with relevant endorsements showing that she had been granted a family permit. The respondent then formally withdrew her decision. Counsel's notes from that hearing, which Ms Isherwood provided to me, confirm that Judge Clarke then granted permission to withdraw the second appellant's appeal. Unfortunately Judge Clarke's decision, whilst referring to the withdrawal of the respondent's decision in Mrs Parveen's case, and confirming that the appeal was proceeding only for Mr Ali, did not actually formally dispose of Mrs Parveen's appeal in specific terms. The judge went on to dismiss the first appellant's appeal, finding that the first appellant had not shown that he was not economically active in Pakistan and that the money received from the sponsor was to meet his essential needs and concluding that he was not dependent upon the sponsor so as to meet the requirements of the EEA Regulations as an extended family member.

5. To complicate matters further, the appellants' solicitors then made an application for permission to appeal to the Upper Tribunal for both Mrs Parveen and Mr Ali, although the grounds only related to Mr Ali's appeal. Permission was granted in the First-tier Tribunal for both appellants and the matter then came before me.

## Hearing and Submissions

6. At the hearing, I sought initially to clarify the status of the appeal of Mrs Parveen. Ms Isherwood, as already mentioned, produced the notes from counsel for the respondent at the hearing before Judge Clarke. It seems that counsel, Ms Victor-Mazeli, was only able to obtain full instructions and clarification of the details of Mrs Parveen's application and grant of a family permit after the hearing, although it had been accepted during the hearing that she had been granted a permit. In her note, she quoted from an email sent to her by Dave Whatcott, a Home Office Presenting Officer in Newcastle, received just after the hearing, which confirmed that Ms Parveen had made a second application on 21 May 2021 to join her son in the UK which was successful. That application had not been linked to Mr Ali, but instead had been linked to Sharmeen Mudassar, the wife of the sponsor, who had applied on 19 May 2021 to join the sponsor in the UK. Visas were issued to Mrs Parveen and to Mrs Mudassar on 3 August 2021. Ms Victor-Mazeli's note stated that Mr Nadeem, who was representing the appellants before Ms Clarke, had not informed the Tribunal that Mrs Parveen had made a second application and had led the Tribunal to believe that Mr Ali and Mrs Parveen had been refused a family permit on the basis of the applications which they had made together and had sought to challenge the refusal of Mr Ali's application on that basis. Mr Nadeem advised me that he had not been aware of the fact that Mrs Parveen's permit had been granted on the basis of a second application. I gave him some time to take further instructions and upon return he confirmed that his office remained unaware of Mrs Parveen having entered the UK as a result of a second application. He agreed, however, that it seemed that that was the case.

7. There was then some discussion as to the disposal of Mrs Parveen's appeal. It was agreed at the hearing that the appropriate course would be for Mr Nadeem to withdraw his case in the Upper Tribunal and for the appeal against the decision of the ECO to be treated as abandoned. On further consideration, however, it seems to me that that may not be the proper course, in light of my reading of the guidance in Ammari (EEA appeals - abandonment) [2020] UKUT 00124. On reflection it seems that the appropriate course would be for me to find that there was no valid appeal before me for Mrs Parveen and that her appeal should be confirmed as having been withdrawn before the First-tier Tribunal in accordance with Rule 17 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. In any event Mr Nadeem asked that Mrs Parveen's case before the Upper Tribunal be withdrawn and, in the event that I had jurisdiction to do so I give consent to the withdrawal under Rule 17(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and confirm that her appeal against the ECO's decision has been withdrawn.

8. I then heard submissions for Mr Ali's appeal.

9. Mr Nadeem abandoned the first ground of appeal. That ground asserted the failure by the judge to resolve the issue of the respondent having granted a permit to Mrs Parveen but not to Mr Ali despite the applications having been

made on the same basis. Mr Nadeem abandoned the ground in light of the new information that Mrs Parveen had been granted her permit on the basis of a second application. With regard to the second ground, Mr Nadeem submitted that the judge, having accepted that money was remitted by the sponsor to the appellants at [11] of his decision, ought to have found dependency established, as per Lim (EEA - dependency) [2013] UKUT 437. As for the third ground, Mr Nadeem submitted that the judge erred by focussing on the sponsor's ability to accommodate and maintain the appellants in the UK, which was not relevant to Regulation 8(2). As for the final ground, Mr Nadeem submitted that the matter of the sponsor borrowing money was immaterial as the breakdown of his outgoings showed that he had a lot of money left over, even after sending funds to the appellants. As for the matter of the appellant being economically active, the absence of tax records for 1 July 2019 to 30 June 2020 was due to the fact that he had stopped trading in 2019 and it had never been put to the appellant or sponsor why he stopped working in 2019.

10. Ms Isherwood submitted that the judge's decision did not contain any material errors of law. With regard to the last ground, she submitted that the appellant had not provided evidence to show that he was no longer working and the judge was entitled to find as she did. The appellant could not meet the requirements of the EEA Regulations and the appeal had to fail. Mr Nadeem did not offer a response to Ms Isherwood's submissions.

## **Discussion**

11. The main issue raised in the grounds, and in the grant of permission, was the disparity in the decisions made for the two appellants when their applications had, it was believed, been made at the same time and been based on the same information and evidence. However Mr Nadeem quite properly abandoned that ground in light of the evidence of Mrs Parveen's permit having been granted on the basis of a subsequent decision to that which was previously appealed. There was no evidence of the information and documents produced by Mrs Parveen when she made that second application and clearly there was no longer any basis for a suggestion that the application was the same as that made by Mr Ali.

12. The remaining grounds are without any merit and seem to me to be little more than a disagreement with the judge's findings on the evidence. With regard to the question of the appellant being economically active, and thus not in need of financial support from the sponsor for his essential needs, the judge was perfectly entitled to conclude as she did. At [7] she had full regard to the appellant's evidence and the sponsor's testimony. She considered the appellant's claim to have ceased working and trading from July 2019 and found that it was inconsistent with the evidence produced by the respondent showing him to be income tax active. She noted the absence of pages, within the evidence from the Federal Board of Revenue, for the tax year 1 July 2019 to 30 June 2020, and the absence of any evidence of a response to the appellant's letter to the Commissioner of Inland Revenue, and considered the absence of such evidence to suggest that the appellant had not in fact closed down his business but remained economically active. That was a

conclusion properly open to the judge on the basis of the evidence before her and in light of the absence of evidence which could reasonably have been obtained by the appellant.

13. The grounds assert that the judge also erred by making findings on the sponsor's ability to accommodate and maintain the appellant in the UK. I accept that the requirements of Regulation 8 of the EEA Regulations are not expressed in such terms, but consider that nothing material arises from this since it is clear that what the judge meant was simply that the sponsor had failed to show that he was in a position to provide the necessary support to the appellant such that the appellant was financially dependent upon him. Such concerns formed part of the reasons given by the respondent for refusing the appellant's application, where the respondent stated that she would expect to see details of the sponsor's circumstances such as his expenditure and evidence of his household members to prove that he was able to meet the appellant's essential living needs as well as his own. That was what the judge considered at [12] to [14]. It is asserted by Mr Nadeem that the schedule of income and outgoings provided by the sponsor was sufficient to show that he had plenty of funds to support the appellant. However the judge clearly had concerns about that evidence, finding that the evidence provided by the sponsor of his income and outgoings was not reliable, since it showed that the sponsor had been borrowing a lot of money as well as claiming to be lending money to friends. Those were concerns from which the judge was perfectly entitled to draw adverse conclusions about the sponsor's ability to support the appellant. The grounds suggest that there had been a lack of clarity in the evidence as a result of the internet issues during the hearing, but the judge made clear at [5] that the parties were satisfied that there were no concerns arising from that. There is therefore no merit in the challenge to the judge's findings in that regard.

14. For all of these reasons it seems to me that Judge Clarke's decision is one which was entirely open to her on the evidence before her. She undertook a full and careful assessment of the evidence and she gave cogent reasons for making the findings that she did. The grounds do not identify any errors of law in her decision. I therefore uphold her decision.

## **DECISION**

### **First Appellant (Qaisar Ali)**

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeals stands.

### **Second Appellant (Zahida Parveen)**

16. The case before the Upper Tribunal has been withdrawn. The appeal against the respondent's decision is withdrawn.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Dated: 16 January 2023