



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: **UI-2022-003276**

First-tier Tribunal No: **EA/53796/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 21 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**HA**

**(ANONYMITY ORDER MADE)**

**and**

**Secretary of State for the Home Department**

Appellant

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr McVeety, Senior Presenting Officer

**Heard at Manchester Civil Justice Centre on 15 August 2023**

**DECISION AND REASONS**

1. The appellant is a citizen of Egypt. The background to the appeal and his immigration history were summarised by the First-tier Tribunal, the decision of which dated 26 June 2022 is the subject of appellant's appeal in the Upper Tribunal:

The Appellant is a 28 year old Egyptian national. He has appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') against the Respondent's decision of 21 October 2021 to refuse his claim for international protection and his human rights claim. That decision followed an earlier decision of 20 October 2021 to make a deportation order against the Appellant pursuant to section 32(5) of the UK Borders Act 2007 ('the 2007 Act'). There is no right of appeal against that deportation decision. Instead, the appeal is brought against the decision to refuse the Appellant's protection and human rights claims on grounds that his removal would be unlawful under section 6 of the Human Rights Act 1998. Appeal Number: EA/53796/2021

2. I have considered whether it is appropriate to make an anonymity direction and I have decided to do so given this case involves protection matters. Immigration history

3. The Appellant is an Egyptian national. He previously applied for asylum as a Syrian national and his appeal against the refusal of this application was dismissed on 31st of March 2015 in the First Tribunal Decision. The immigration judge found that the Appellant was not credible and had failed to show that he was a Syrian national and he found that the Appellant was in fact an Egyptian national.

4. The Appellant applied for a residence card as the spouse of an EEA national on 19 December 2017. This application was refused on 27 March 2018.

5. On 24 May 2018 the Appellant was convicted of possession/ control of identity documents with intent and making false representations. He was sentenced to 20 months imprisonment.

6. On 15th June 2018 the Appellant was served with a deportation decision (stage one) and invited to provide reasons why he should not be deported. On 3 August 2018 the Appellant claimed asylum as an Egyptian national.

7. On 18 April 2019 the Appellant provided evidence to show that his partner was exercising Treaty rights and the case should be treated as an EEA case.

8. A deportation order was signed on 20 October 2021 and the Appellant's protection and human rights claim was refused by the Respondent in a refusal letter dated the following day, 21 October 2021 (the RFRL). The RFRL confirmed that the Appellant had failed to apply for the EUSS in his own name and as a result the Appellant's deportation case would be considered as a non-EEA case.

2. Granting permission in the Upper Tribunal, Upper Tribunal Judge Lane Stephen Smith wrote:

Since the appellant's wife appears to have been exercising Treaty rights at all relevant times (and now enjoys settled status under the EUSS), it is arguable that the First-tier Tribunal should have considered whether the appellant enjoyed any rights under the Immigration (European Economic Area) Regulations 2016 (as preserved by the relevant transitional provision) or the EU Withdrawal Agreement. While the judge noted that the appellant had not made an application under the EUSS at the relevant time, arguably that was not the determinative question for those purposes. This issue was raised at paragraph 6 of the Appeal Skeleton Argument relied upon by the appellant before the First-tier Tribunal. I grant permission to appeal on account of this ground alone. 2. The remaining grounds of appeal are primarily a series of disagreements of fact and weight and, were it not for the arguability of the above point, I would refuse permission to appeal. However, I do not propose to restrict the scope of this grant of permission, in light of the pragmatic approach encouraged by paragraph 48 of the Joint Presidential Guidance 2019 No. 1 Permission to appeal to UTIAC.

3. At the initial hearing in Manchester, the appellant attended in person with his wife. Both the appellant and his wife spoke good English. I explained the issues to them in detail and heard submissions from both the appellant and his wife.

4. Mr McVeety submitted, with respect, that the grant of permission was incorrect. The appellant had made an earlier unsuccessful claim for a residence card under the 2016 EEA Regulations (see [1] above) but, prior to the First-tier Tribunal hearing his appeal, he had never made a claim within the time limits under those Regulations before they ceased to exist or under the EU Settlement Scheme (although he has, in 2022, made an application under the Scheme). Mr McVeety referred me to the Home Office guidance EEA Public Policy and Public Security Decisions (Version 7) which deals with the 'grace period' and the status of applications made under the 2016 Regulations:

**The grace period:**

The period from the end of the transition period to 24:00 GMT on 30 June 2021 is referred to in this guidance as the “grace period”. During the grace period, the Grace Period Regulations 2020 saved the EEA Regulations 2016 for those who were lawfully resident in the UK immediately before the end of the transition period and their joining family members, **until they acquired EUSS leave based on an application made by 30 June 2021**. This was to prevent those who were potentially eligible to apply to the EUSS from losing their previous free movement rights (and therefore lawful basis of stay in the UK) at a time when they could still apply for leave under the EUSS.

**Now that the grace period has ended, the EEA Regulations 2016 are only saved for those who were lawfully resident in the UK immediately before the end of the transition period and who made an application to the EUSS before the end of the grace period which is still awaiting a decision or final determination of an appeal.**

Since 1 July 2021, the Grace Period Regulations 2020 continue to apply only to those who were lawfully resident immediately prior to the end of the transition period and who applied to the EUSS by 30 June 2021, and who are still awaiting a final determination

[my emphasis]

5. Mr McVeety submitted that the appellant had not been lawfully resident in the United Kingdom immigration before the end of the transition period nor had he made a EU Settlement Scheme application before the end of the grace period. Upper Tribunal Judge Smith considered such a failure to be ‘not determinative for these purposes’ but it is difficult to see how the judge may have determined that the appellant enjoyed rights under Regulations which had ceased to exist and a scheme, the provisions of which the appellant had never invoked.
6. It may be that Upper Tribunal Judge Smith considered that the matter should have been considered by the judge because it had been raised in the appellant’s representative’s skeleton argument. However, notwithstanding the puzzling attribution of an EU case reference to the appellant’s appeal, both representatives before the First-tier Tribunal and indeed the judge were clear that the appellant’s appeal was brought on international protection and human rights grounds only (asylum, humanitarian protection, and Article 8 ECHR). The judge was careful to record this at [24-5]:

24. There was then a discussion about the issues that I would need to decide in order to determine the appeal. Mr Shea was of the view that the challenge by the Appellant in the current proceedings was limited to Article 8 grounds, albeit that this may require findings of fact in relation to the subject matter of the Appellant’s protection claim. I note that the Appellant’s appeal form at page 10 of the bundle describes the grounds of appeal as “The decision breaches the appellant’s rights under the EEA regulations” **but I recognise that both Respondent and Appellant have treated the appeal as being brought on both protection grounds and human rights grounds**. The Appeal form was in response to the RFRL at page 31, which contains a refusal of the Appellant’s asylum claim and his family and private life Article 8 claims. The Appeal Skeleton Argument at page 178 relies on the Appellant’s rights under the EU Treaties, under the ECHR and under the Refugee Convention. **The Respondent’s Review suggests that the issues in the case are:**

**(k) whether the Appellant’s claim engages the refugee convention;  
(l) whether the Appellant meets any of the exceptions to deportation; 5 Appeal Number: EA/53796/2021**

**(m) whether there are any very compelling circumstances.**

**25. For completeness, and as both representatives indicated that they were prepared for me to consider the protection elements, I adopt the issues as set out by the Respondent including Refugee Convention grounds, humanitarian protection and Articles 2, 3 and 8 of the ECHR.**

[My emphasis]

7. Notwithstanding the issues raised in the appellant's skeleton argument, the judge was in doubt which issues he was required (and had been unequivocally asked by the parties and their representatives) to address and upon which to reach a decision. Whilst I agree with Mr McVeety that any examination by the judge of putative claims which the appellant may have made (but had not made) under the 2016 Regulations or the EU Settlement Scheme would have inevitably have concluded that the appellant would fail, even more fundamentally the judge was clear that neither party wished him to consider EU rights in the appeal; for the appellant to complain after the event that the judge should have done so is not a tenable position.
8. In the circumstances, the appeal is dismissed.

### **Notice of Decision**

**This appeal is dismissed.**

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 15 August 2023**