



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

**Case Nos: UI-2022-004366**  
**UI-2022-004367**  
**UI-2022-004368**  
**First-tier Tribunal Nos:**  
**[EA/10324/2021]**  
**[EA/02607/2021]**  
**[EA/10419/2021]**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 17 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**  
**DEPUTY UPPER TRIBUNAL JUDGE METZER KC**

**Between**

**(1) MRS RIZWANA KAUSAR**  
**(2) IQRA EHTISHAM**  
**(3) FOUZIA KOUSAR**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**The Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: *Ms S Khan*, instructed by Adrian Immigration Services Ltd  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard via CVP and at Field House on 12 July 2023**

**DECISION AND REASONS**

1. These written reasons reflect the oral decision which we gave to the parties at the end of the hearing.
2. The hearing was conducted with the Judges attending at Field House, whilst the representatives attended via CVP. We checked at the beginning of the hearing that we and the representatives were able to understand one another and that they should let us know if there were any difficulties in doing so. No difficulties were indicated and we were satisfied that a fair hearing took place.
3. The appellants appeal against the decision of Judge Ali of the First-tier Tribunal ("The Judge"), who, in a decision on the papers promulgated on 14<sup>th</sup> March 2022,

rejected their appeals under the Immigration (EEA) Regulations 2016 against the respondent's refusals of their applications for EEA family permits as extended family members of their claimed sponsor, Mr Mohammed Begum, a Spanish national exercising EU treaty rights in the UK. In summary, the sole disputed issue was whether the appellants were dependent on the sponsor. The Judge concluded that the appellants had not proven that dependency.

### **The grounds of appeal and grant of permission**

4. Permission to appeal was initially refused by the First tier Tribunal, but the appellants renewed their applications. The ground of appeal is simple - the Judge failed to consider an additional bundle of documents, sent to the Tribunal on 10<sup>th</sup> September 2021, which included witness statements which were directly relevant to the claimed dependency and there has been some sort of procedural mishap. Upper Tribunal Judge Macleman granted permission on 6<sup>th</sup> February 2023. The respondent lodged a Rule 24 response, indicating that she does not oppose the appellants' appeal.

### **The respondent's concession and disposal of the appeal**

5. Mr Lindsay conceded on behalf of the respondent that the Judge had materially erred in law, such that his decision was not safe and could not stand. The original bundle dated 11<sup>th</sup> May 2021 had included an index which stated that witness statements were "to follow" (at rows 14 to 16). In contrast, the supplementary bundle dated 10<sup>th</sup> September had included, at rows 8 to 11, copies of statements. Mr Lindsay has not seen those statements, nor have we, but Ms Khan has and we are content to take her at her word, as a member of the Bar and with professional obligations as an officer of this Court, that the statements directly related to the claimed dependency, including the witness statement of the sponsor. This was material, because the Judge had stated at paragraph 5(vii) of his decision that:

"It is important to note that the bundle made reference to witness statement being provided by Mr Mohammed Tariq Malik Begum, Mr Ehtisham Hussain and Mrs Fouzia Kousar but there were no statements submitted in the documentary evidence before me."

6. We accept Mr Lindsay's concession and also record his undertaking (with our thanks) to review the case once he has seen the witness statements.
7. We turn to the question of disposal. We reminded ourselves of the Court of Appeal's decision in AEB v SSHD [2022] EWCA Civ 1512 and the nature and the extent of the necessary fact-finding, (see §7.2(b) of the Senior President's Practice Statement). Both representatives urged us to remit remaking, bearing in mind that there are no preserved findings. For the avoidance of doubt, they sought a hearing rather than disposal on the papers. We regarded this as appropriate. Which witnesses the appellants decide to tender is a matter for them, although the respondent may, if course, invite a Judge to attach less weight where no witnesses are tendered to give live evidence.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and we set it aside, without preserved findings.**

**We remit this appeal to the First-tier Tribunal for a complete rehearing, rather than a decision on the papers.**

**Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Ali.**

**No anonymity directions are made.**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12<sup>th</sup> July 2023**