



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

**Case No: UI-2022-006515**  
**First-tier Tribunal No:**  
**EA/05748/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 October 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**Mr Sifyan Abbas**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: No legal representation

For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

**Heard at Manchester Civil Justice Centre on 6 September 2023**

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Karbani, promulgated on 29<sup>th</sup> November 2022, following a hearing at Hatton Cross on 25<sup>th</sup> November 2022. The appeal was heard on the papers and in the determination the judge allowed the appeal of Mr Sifyan Abbas, whereupon the Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 2<sup>nd</sup> March 1987. He appealed against the refusal of a family permit under Appendix EU (Family Permit) against a decision dated 21<sup>st</sup> December 2021.

### **The Appellant's Claim**

3. The Appellant claims to be the spouse of Javaria Abbas (the Sponsor) who is a Swiss national with pre-settled status in the UK. The couple have two children and they too are resident in the UK.

### **The Judge's Findings**

4. The judge began by drawing attention to paragraph FP 6 of Appendix EU (Family Permit) which states that an Applicant would meet the eligibility requirements for entry clearance under Appendix EU where the Entry Clearance Officer is satisfied that "at the date of the application" the Appellant is "a specified EEA citizen or a non-EEA citizen" (see FP 6(1)(a)). The judge then went on to consider also the definition of a "relevant EEA citizen". This is a person, as the judge observed, who "has been granted indefinite leave to enter or remain under paragraph EU2 or EU3 of Appendix EU to these Rules".
5. The judge then went on, under a section headed "Findings and Reasons" to assert that "The only issue in the appeal is whether the sponsor is a relevant EEA citizen". He referred to "a letter dated 6 March 2020 stating that the sponsor has been granted limited leave to remain in the UK" together with "a residence card from the sponsor issued on 22 February 2021". He noted how there were documents confirming that the Appellant and Sponsor were married in Pakistan on 12<sup>th</sup> August 2011, that they had two children of the marriage who live with the Sponsor in the UK, and that they too have been issued with residence cards. The Sponsor is employed by JD Sports Fashion Plc (paragraph 6). Against that background, the judge went on to say that, "based on the evidence provided, I am satisfied that the sponsor is a relevant EEA citizen within the definition set out above" (paragraph 7), and that on that basis, "that the appellant meets the requirements of FP 6 Appendix EU Family Permit" (paragraph 8). The appeal was allowed.

### **Grounds of Application**

6. The grounds of application by the Secretary of State contain simply one point. This is that the judge misdirected himself as a matter of law in stating that the Appellant's spouse, Javaria Abbas is a "relevant EEA national" under Appendix EU. The presence of a residence card and pre-settled status does not automatically confer on Ms Javaria Abbas EEA nationality. She was "is a citizen of Pakistan only, who has obtained her own permit as a third country national as a dependant upon her Father's status as an EU citizen".

### **Submissions**

7. At the hearing before me on 6<sup>th</sup> September 2023 Mr Bates, appearing on behalf of the Secretary of State submitted that this was a single issue appeal. The Sponsor did not have EEA nationality and so could not use the EUSS framework within which to sponsor her husband in Pakistan to enter the UK. The definition of a "relevant Sponsor" did not cover Mrs Javaria Abbas.
8. The Sponsor, who had an interpreter by her side assisting her, calmly explained that she had the relevant EU status and had always thought that she could

sponsor her husband to enter the UK. She referred to the Grounds of Appeal before Judge Karbani, which she said she had drafted herself, asserting that she was aware of many cases similar to this one where a sponsoring wife could use the EUSS scheme in order to have their spouse join them in the UK. Indeed, she claimed that even outside the courtroom, she had been speaking to other interested parties who had similar claims, who had been successful in this way.

### **Error of Law**

9. I am satisfied that the making of the decision by the judge involved the making of an error of law such that the decision has to be set aside. My reasons are as follows. When the judge considered the appeal, it was early noted that, “The appellant claims he is the spouse of Javaria Abbas, (the sponsor), a Swiss national with pre-settled status in the UK” (paragraph 2). On the other hand, the judge also noted immediately thereafter that, “by decision letter dated 27 May 2022, the respondent refused the application as the evidence submitted with the application indicated that the sponsor was a citizen of Pakistan, not Switzerland” (paragraph 3).
10. It was for the judge to determine whether the Sponsor did indeed have Swiss nationality in addition to her Pakistani passport because since 1<sup>st</sup> January 1992 Swiss law allows for multiple citizenship without any restrictions. The judge did not do so and such passport documents that there are in the Bundle before me indicate only that the Sponsor is a citizen of Pakistan. In the typed Grounds of Appeal before Judge Karbani, all that is said (at Section 2) is that, “We have applied under the EU Settlement Scheme and I also have checked under the Appendix and it does not state anywhere that my husband [meaning ‘my wife’] is not able to act as my sponsor ...”.
11. At no stage is it asserted that the Sponsor also has a Swiss passport. The Sponsor does have a residence card but that is not the same as having the requisite citizenship. In fact, in the application itself, and under the Section “Extra Information” (at B7) the Appellant states that, “Previously my father in law applied for me, now my wife has pre settled status so I am applying on her EUSS.”
12. On the evidence before Judge Karbani, there was no basis upon which to make a finding that the Sponsor was an EU citizen. If that was the case, she was under no position to use the EUSS Scheme in order to support the sponsorship of her husband in Pakistan. There is no Article 8 issue in relation to the right to family life asserted under the human rights section of the Grounds of Appeal, which is left vacant, and no evidence of this argument having been raised before Judge Karbani.

### **Re-Making the Decision**

13. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am dismissing this appeal for the reasons given above. As the refusal letter of 27<sup>th</sup> May 2022 makes clear, “If you have further evidence you want us to consider, you can make another application under the EUSS Family Permit at no cost” (at A2). It is a matter for the Appellant to decide whether that is an appropriate course of action for him on the basis of any further evidence that has not been so far disclosed.

**Notice of Decision**

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

**Satvinder S. Juss**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18<sup>th</sup> October 2023**