



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006602

First-tier Tribunal No: EA/16583/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th November 2023

Before

UPPER TRIBUNAL JUDGE WILDING

Between

**SECRETARY OF STATE FOR THE
HOME DEPARTMENT**

Appellant

And

**PHUMAN SINGH
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs A Nolan, Senior Home Office Presenting Officer

For the Respondent: Mr I Khan, Counsel

Heard at Field House on 11 October 2023

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Head's ('the Judge') decision to allow the appellant's appeal. For ease I refer to the parties as they were before the First-tier Tribunal.

Background

2. The appellant is a citizen of India born on 28 May 1969. He applied leave under Appendix EU on 15 June 2021 as the dependent family member of his brother. This was refused on 29 November 2021, and against which he appealed.
3. His appeal came before the Judge on 6 May 2022. She found that the immigration rules could not be met in his case because the immigration rules do not cater for dependency on a brother. However in considering the case under the Withdrawal Agreement ground of appeal, she concluded:

54. I therefore find that that the requirement for a relevant document is not necessary and does not genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. This in my view is particularly so, taking into account the fact that the appellant did seek to apply for a document but was refused without a right of appeal, for want of a valid passport. It is well-established that whilst the respondent is entitled to require a residence document as an administrative matter, she does not have the power to do so as a matter of law. In other words, the lack of a residence document cannot demonstrate that a dependent family member is not lawfully resident. Moreover, the respondent has introduced a concession providing that a relevant document can be met by way of an appropriate letter from the Secretary of State demonstrating that the respondent recognises that flexibility may be required.

55. I find that the appellant is the dependent family member of his brother and has been, for over a decade. I note that he has claimed vulnerabilities and no family remaining in India, where he has not resided for over 15 years. I find on the evidence that there is a particular hardship in this case and the respondent's decision to refuse is a disproportionate one.

4. The respondent was dissatisfied and appealed. Permission was granted by First-tier Tribunal Judge Grimes on 23 June 2022.

Decision and reasons

5. Since the granting of permission to appeal, the Court of Appeal has handed judgment down in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921. That decision upheld the decision of the Upper Tribunal.
6. The effect of this is that an appellant such as Mr Singh in this case cannot gain assistance from the Withdrawal Agreement in an appeal against the respondent's decision. He does not fall within the personal scope for the purposes of Article 10, and as a consequence cannot access Article 18 of the Withdrawal Agreement.
7. The Judge materially erred in law in allowing the appeal on the basis of the Withdrawal Agreement. I set her decision aside.
8. Given the preserved findings in relation to the immigration rules, I remake the decision by dismissing the appeal under the Withdrawal Agreement.

Notice of Decision

The decision of the First-tier Tribunal was infected by an error of law

I remake the decision dismissing the appeal.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 11th October 2023