



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001096

First-tier Tribunal No: EA/11685/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

27th October 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

Haroon Naeem Mirza

(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Janjua
For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 17 October 2023

DECISION AND REASONS

1. The application, a male citizen of Pakistan, was born on 24 December 1981. He applied for settlement in the United Kingdom under Appendix EU as the spouse of Rabeel Mirza, a British citizen. his application was refused on 9 November 2022 and his subsequent appeal to the First-tier Tribunal was dismissed by a decision promulgated on 22 February 2023. The appellant now appeals, with permission, to the Upper Tribunal.
2. The background is summarised by the First-tier Tribunal judge at [8-9]:

The Appellant entered the UK via a student visa in 2002. That was valid until 2004, at which point a residence permit was granted until 2005. He and the sponsor (who is a British national) married in Pakistan in 2008. 9.) The sponsor travelled to Ireland the same year, followed a short time later by the Appellant. Their intention was to settle. Co-habitation occurred throughout and continues to date.

Whilst in Ireland, a son was born. He is said to have Irish citizenship. Both returned to the UK in January 2015. It seems accepted that, between 2012 and her departure from Ireland the sponsor was not employed or self-employed. Residence cards (in Ireland) were granted to the Appellant and sponsor in September 2009. The Appellant subsequently sought indefinite leave to remain in the UK in 2018 but was refused.

3. The grounds are short. The appellant submissions that his wife's settled status as a United Kingdom citizen living in Ireland was not taken into account. She lived in Ireland for 5 years but without exercising Treaty Rights there. However, the appellant asserts that joint constitutional arrangements existing between the United Kingdom and Ireland since the 1920s entitled her to enjoy settled status and, in essence, entitled him to 'similar status on arrival in the United Kingdom' [First-tier Tribunal decision, 20]. Mr Janjua repeated this submission at the initial hearing before the Upper Tribunal.
4. The First-tier Tribunal rejected the appellant's submission. As the judge notes at [21], 'the difficulty ... is that the appellant is not a British or Irish citizen.' It remains unclear how the appellant may benefit from a constitutional arrangement intended to benefit British and Irish citizens when he is neither. That, in essence, was the argument advanced by Mr Tan, who appeared at the initial hearing for the Secretary of State.
5. Although Mr Janjua's argument was forcefully advanced, I agree with Mr Tan. I agree also with Senior Presenting Officer Ms Isherwood who wrote the respondent's R24 letter; 'it appears that the appellant is attempting to conflate the requirements of the *Surinder Singh* right for a continuation of free movement rights on return from their exercise in another country (here the Republic of Ireland) with the separate bilateral arrangement between the United Kingdom and Ireland.' It is striking that, even at this late stage, the appellant has not provided evidence regarding the right to residence in the United Kingdom which he claims to have acquired through his wife's residence in Ireland. The judge noted the absence of such evidence at [28] and the Upper Tribunal, whilst aware of the constitutional arrangement to which Mr Janjua refers, is not prepared without evidence to take judicial notice of the consequences of the arrangement for the appellant's status in the United Kingdom.
6. Since the challenge to the judge's reasoning fails and given that it is clear that the appellant could not succeed in an application under Appendix EU (via Regulation 9 of the 2016 EEA Regulations), it follows that the appeal must be dismissed.

Notice of Decision

The appeal is dismissed

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 17 October 2023