



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001579
UI-2023-001580
UI-2023-001581
UI-2023-001582
First-tier Tribunal No:
EA/50132/2022
EA/50133/2022
EA/50134/2022
EA/50135/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SIDRA BEGUM
MUHAMMAD ASLAN
NADIA BEGUM
ALYAN ADNAN
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Holmes instructed by Parkview Solicitors Ltd.
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 27 September 2023
(Via Microsoft Teams as a result of industrial action preventing the parties
from entering the Court building.)

DECISION AND REASONS

1. The appellants, nationals of Pakistan, appeal with permission the decision of First-tier Tribunal Judge Power ('the Judge'), promulgated on 16 December 2022, in which the Judge dismissed the appeals against the refusal of the applications for EEA Family Permits made under the Immigration (EEA) Regulations 2016. The

reference to 1996 at [1] of the determination under challenge is accepted as a typographical error.

2. On 29 December 2020 the first appellant, who was born on 5 January 1987, made an application for a Family Permit as a dependent family member of her brother-in-law, Mr Jahfar Bagum ('the Sponsor'), a Spanish national exercising treaty rights in the UK. The second, third, and fourth appellants made applications for EEA family permits as dependent family members of the Sponsor on the same occasion.
3. The Judge notes at [5] the agreed issues requiring a decision, being (1) whether the appellants' are dependent upon the Sponsor for their essential living needs and the Entry Clearance Officer's (ECO) finding that it was not sustainable for the Sponsor to support the appellants' financially and that they will become an unreasonable burden on the welfare state, and (2) whether the fourth appellant had evidenced his claimed relationship to the Sponsor.
4. It was not disputed before the Judge that the Sponsor is a qualified person.
5. Having considered the documentary and oral evidence the Judge sets out findings of fact from [18] of the decision under challenge.
6. At [19] Judge sets out the reasons why it had not been shown that the appellants were dependent upon the Sponsor in order to meet their essential needs.
7. At [20] the Judge makes a specific finding of not being satisfied that the picture of dependency being presented to the Tribunal is a genuine one.
8. In relation to the fourth appellant, who claimed he was the nephew of the Sponsor and son of the first appellant, having reviewed the evidence the Judge finds that the fourth appellant has shown that he is related to the Sponsor as claimed [25].
9. The appellants initially relied on three grounds of appeal, Ground 1 alleging procedural unfairness, Ground 2 a material misdirection of law, and Ground 3 failing to take into account material facts. Permission to appeal was refused by another judge of the First-tier Tribunal on those grounds and renewed to the Upper Tribunal on grounds drafted by Mr Holmes. He relies on four grounds, being (a) proceeding under a mistake as to the Tribunal's jurisdiction, (b) failing to take account of relevant matters, (c) failing to apply the Surendran guidelines, and (d) failing to give adequate reasons/reaching irrational conclusions, as more fully set out in the grounds dated 11 May 2023.
10. Permission to appeal was granted by Upper Tribunal Judge Norton-Taylor 16 June 2023, the relevant part of the grant being in the following terms:
 2. The core issue in the linked appeals was whether the Appellants were dependent on the United Kingdom-based sponsor, a Spanish citizen. The judge concluded that there was no relevant dependency.
 3. The four grounds of appeal are arguable, although there are a number of adverse factual findings in the Appellants' path. If any of the alleged errors are made out there may still be questions as to materiality.

Discussion and analysis

11. Mr Bates on behalf of the Secretary of State conceded the appeal by accepting that the Judge had erred in law in a manner material to the decision for the reasons set out in the grounds seeking permission appeal.
12. Mr Bates accepted the error in [19] of the decision and Grounds 2 and 3 as drafted by Mr Holmes in particular.

13. As the error relates to a fairness point in relation to Ground 3, failure to take into account the evidence and to take account of material matters, Ground 2, as well as a point of procedural unfairness in Grounds 1, having regard to the fact that such unfairness undermines the findings of the Judge requiring a complete review hearing and extensive fact-finding to be made on the next occasion, having considered the guidance from the Upper Tribunal in relation to whether an appeal should be remitted or retained within this Tribunal, I find on the particular facts of this appeal that it is appropriate for the appeal to be remitted to First-tier Tribunal sitting at Manchester to be heard afresh by a judge other than Judge Power.

Notice of Decision

17. It is accepted the First-tier Tribunal has materially erred in law. The decision is set aside. The appeals shall be remitted *de novo* to the First-tier Tribunal sitting at Manchester to be heard afresh by a judge other than Judge Power.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2023