



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2023-003557  
[UI-2023-003558](#), [UI-2023-003559](#)  
[UI-2023-003560](#), [UI-2023-003561](#)  
FIRST-TIER NUMBER: EA/01197/2023  
EA/01198/2023, EA/01199/2023  
EA/01201/2023, EA/01202/2023

**THE IMMIGRATION ACTS**

**Field House  
On 14 December 2023**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> of December 2023**

**Before**

UPPER TRIBUNAL JUDGE PITT

**Between**

CHAUDHRY SHAHID-ULLAH  
FAHMEEDA KANWAL  
MUHAMMAD SAMI ULLAH TARAR  
MUHAMMAD ABDULLAH  
MUHAMMAD REHAN ULLAH

**(NO ANONYMITY DIRECTION MADE)**

**and**

ENTRY CLEARANCE OFFICER

Appellant

Respondent

Representation:

For the appellant: No representative

For the respondent: Mr Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 11 July 2023 of First-tier Tribunal Judge Wyman which refused the appellants' appeals against a refusal of a Family Permit as the extended family members of a Norwegian national exercising Treaty rights in the UK.
2. The appellants are nationals of Pakistan and are a family comprising the parents and three minor children. Their appeals proceed on an identical basis. For the purposes of this decision it is expedient to refer to Mr Ullah as "the appellant" and read over the consideration of his case to those of all of the appellants.
3. The appellants applied for a Family Permit to join Mr Ullah's sister, a Norwegian national, in the UK. Their applications for a Family Permit were refused on 1 April 2021 as it was not accepted that they were related as claimed to the sponsor or that they were dependent on the sponsor.
4. On 23 April 2021 the appellants appealed to the First-tier Tribunal against the refusals of a Family Permit. The appeal forms set out an intention to lodge further materials including documents addressing the appellants' relationship to the sponsor and financial evidence.
5. The appellant enquired about the progress of the appeals on 17 February 2023 and they were allocated to be considered on the papers by First-tier Tribunal Judge Wyman on 26 June 2023. Judge Wyman refused the appeals, finding that the evidence did not show that the appellants were related as claimed or that they were dependent on the sponsor. The decision states that the appeal was considered on 26 June 2022 but this would appear to be a typographic error as the body of the decision refers to correspondence from 22 June 2023 to 26 June 2023 and there is no suggestion that it took a year for it to be promulgated.
6. The appellants appealed against the decision of the First-tier Tribunal Judge Wyman and they were granted permission to appeal by the Upper Tribunal on 19 October 2023.
7. The appeal on error of law was listed for a hybrid hearing on 14 December 2023. Mr Melvin attended in person. Facilities were set up for the appellant and sponsor to attend remotely. None of them attended and there was no explanation for this. The Upper Tribunal database showed that the appellants and the sponsor had been sent links to the remote hearing and informed of the details for the hearing at Field House. The appellant emailed a bundle of materials for the hearing sent on 14 December 2023 which indicated that he was on notice. I took into account that nothing indicated that any party had taken steps to follow the provisions for an appellant to attend a remote hearing from abroad that followed the case of Agbabiaka (evidence from abroad; Nare guidance) [2021]UKUT 286 (IAC). In all the circumstances, I determined that it was fair and just to proceed with the hearing in the absence of the appellants and the sponsor.

8. The appellant maintains that it was unfair of the First-tier Tribunal to proceed to decide his case without the materials that he had provided. I found that the grounds had merit. The case was placed before Judge Wyman on the papers on 26 June 2023. The decision was issued on 11 July 2023. Judge Wyman acknowledged that there was correspondence from the appellant dated 26 June 2023 which stated that he had tried to submit a bundle of evidence on 22 June 2023 but had not confirmation and requested this from the First-tier Tribunal on 23 June 2023. The First-tier Tribunal replied on 26 June 2023 stating that no document had been received and advising the appellant to resubmit his materials. Judge Wyman commented in paragraph 15 of the decision that no further documents were received and the appeal was decided on what had been before the First-tier Tribunal as of 26 July 2023.
9. The material provided with the grounds of appeal also maintain that the appellant could not reply to the First-tier Tribunal email of 26 June 2023 until 3 July 2023. He maintains that this was because he was in an accident in Pakistan, injured his spine and had to go to hospital. He provided a number of medical documents relating to that admission. The appellant maintained in the email sent on 3 July 2023 that he could not re-send the bundle earlier due to the hospital admission. He maintained that he was resending the bundle in two parts and provided the two emails which he maintained showed this is what he did on 3 July 2023.
10. An email dated 4 July 2023 from the First-tier Tribunal shows that part 1 of the appellants' bundle had been received by that date. The email requested submission of part 2.
11. The appellant also provided an email dated 6 July 2023 noting the confirmation that the First-tier Tribunal had received part 1 of his bundle but that part 2 had not been received. The email of 6 July 2023 shows that part 2 was sent again.
12. On 10 July 2023 the first appellant emailed the First-tier Tribunal again and requested confirmation that part 2 of his bundle had been received. The First-tier Tribunal replied on 11 July 2023 stating that part 2 of the bundle had been received and sent to the judge.
13. As above, the decision of the First-tier Tribunal was issued on 11 July 2023. Nothing in it shows that the Judge was informed of the correspondence and documents set out above. It makes no reference to any of the emails or documents sent by the appellant and the First-tier Tribunal on 3 July, 4 July, 6 July, 10 July 2023 and 11 July 2023.
14. It is my conclusion that the failure to put the correspondence and documents of 3 July, 4 July, 6 July, 10 July 2023 and 11 July 2023 before Judge Wyman led to a procedural error. Those materials show that by 6 July 2023 (at the latest), and prior to the decision being issued, the First-

tier Tribunal had received parts 1 and 2 of the appellant's bundle but those materials were not put before the First-tier Tribunal Judge. The matters set out above indicate that no criticism attracts to Judge Wyman.

15. Having found a procedural error such that the appellant did not receive a fair hearing, it was my conclusion that the decision of the First-tier Tribunal should be set aside to be remade. Where primary findings of fact on the appellants relationship to the sponsor and dependence on her require remaking it was my view that the appeal had to be to be remade in the First-tier Tribunal afresh; Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) considered.

### **Notice of Decision**

16. The decision of the First-tier Tribunal discloses a procedural error and is set aside to be remade afresh in the First-tier Tribunal.

### **Direction**

17. If the appellant wishes to give evidence remotely from Pakistan he should follow the guidance provided in the Presidential Guidance Note No 4 of 2022:

<https://www.judiciary.uk/wp-content/uploads/2022/02/20220712-Guidance-FtT-IAC-witnesses-giving-evidence-from-abroad.pdf>

18. If the sponsor is to attend the First-tier Tribunal hearing, the appellant should inform the Tribunal and, if appropriate, request that the appeal is listed at the hearing centre closest to her home.
19. The appellant is to serve all materials on which he wishes to rely in a consolidated indexed, paginated bundle NO LATER than 14 days prior to the hearing before the First-tier Tribunal.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 14 December 2023