



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003458
First-tier Tribunal No:
EA/09755/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 May 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

E A
By her litigation friend A A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Saeed, Solicitor, instructed by Kinast Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 29 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. We continue this order because the Appellant is a minor and there is no legitimate public interest in her identity.

DECISION AND REASONS

(extempore)

1. This is an appeal by a young woman aged about 14 years against a decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State refusing her leave under the EU Settlement Scheme. On 24 October 2023 Upper Tribunal Judge Canavan ordered that she should be represented by a litigation friend.
2. The short point is that in order to succeed in her appeal she had to show that her presence in the United Kingdom was being facilitated by the United Kingdom. She could do not that for two reasons. First, she had made an earlier application and that had been unsuccessful so, far from facilitating her presence, the Respondent had decided that she was not entitled to be in the United Kingdom. Second, she has made a further application, possibly not in the form that was intended, that did not provide for facilitation. It was her contention that the second application should have been treated as if it was a further application under the EU Settlement Scheme but that was not the application she made and it has been determined by the Court of Appeal in the case of **Siddiq v Entry Clearance Officer [2014] EWCA Civ 248** that the Secretary of State cannot be expected to, and possibly cannot, determine applications that are for something that cannot be granted as if they had been an application that could have been granted. It was for the Appellant to decide the leave that she wants, not the Secretary of State.
3. As Mr Saeed recognised, the decision in **Siddiq** is a very substantial blow to his case. Mr Saeed argued that the decision was wrongly decided. He did that as respectfully as he could but that was his point. Even if that is right, and it is certainly not our view, it is a decision that binds us but we put on the record that he made the submissions that he did.
4. Mr Saeed had also indicated that he understood permission was being sought from the Supreme Court to appeal the decision of **Siddiq** and asked us to adjourn awaiting that decision. We are not prepared to do that. As we indicated when we considered the application, this is an area where there is a clear authority from the Court of Appeal. There is no reason to think that the Supreme Court will grant the permission application that has been made and particularly in an area such an immigration law where things are fast moving it is undesirable to adjourn awaiting decisions of the higher courts because they can wait a long time and do not necessarily meet the point when they come and really nothing would be done if applications like that were routinely granted.
5. Mr Saeed emphasised the youth of the appellant but it is a fact that does not change the principle. It follows therefore that we refused the adjournment application and, after looking at the papers, following **Siddiq** we found that we could not do anything other than dismiss the appeal, which is what we do.
6. We are quite sure that this point has been considered but we put on the record again that the Appellant is a young woman with close family members in the United Kingdom; there may be human rights considerations and an application might have to be thought about but that is not a matter for us.

Notice of Decision

7. The appeal is dismissed.

Jonathan Perkins
Judge of the Upper Tribunal
Immigration and Asylum Chamber
1 May 2024