



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

Appeal Number: UI-2021-001179
EA/02474/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2022**

**Decision & Reasons Promulgated
On 15 May 2023**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

Between

**MISS UZMA MUNIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - UKLPA (LIVERPOOL)

Respondent

Representation:

For the Appellant: The sponsor, Mr Mohammad Tahir

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed to the First-tier Tribunal against the Secretary of State's decision of 22 January 2021 refusing her application for a family permit under the EU Settlement Scheme (EUSS) family permit.
2. The appeal was allowed by the judge but subsequently, the Secretary of State having been granted permission to appeal, a panel of the Upper Tribunal found that the judge had erred in law and, rather than re-making the decision, elected to await the outcome of forthcoming presidential

guidance on relevant matters in Celik [2022] UKUT 00220 and another case, Mahmood, on grounds which it seems clear are covered by the decision of the Presidential panel in Batool [2022] UKUT 00219 (IAC).

3. At the hearing the sponsor, Mr Tahir, said that the family registration certificate (FRC) had been wrong and that there was a missing document that showed that the appellant was the sponsor's real sister. This was the only objection that had been made.
4. On behalf of the Secretary of State Mr Clarke made it clear that the claimed relationship of brother and sister between the appellant and the sponsor was as claimed. The difficulty that arose for the appellant was that she had made an application under the EUSS (FP) for entry clearance but the range of relationships in respect of which an application could succeed was limited and did not include siblings. As a consequence, the appellant could not succeed under the Immigration Rules. As regards the right of appeal under the 2020 Exit Regulations this could be in respect of the Immigration Rules or the Withdrawal Agreement but that was the only basis for an appeal and there was no opportunity to raise a matter under the EEA Regulations, as set out at paragraphs 10 to 12 of the error of law decision. There was no scope to raise that matter now.
5. Mr Tahir said that when he spoke to the solicitor and he submitted the document the rest of the things were done by him and at that time this kind of sponsorship was allowed and he knew people who had got through. He said that if this was the reason he asked why it was not rejected two years ago and it had been pending for two years. They had been awaiting the Home Office response and when they got the FRC document it would be all right and other people he knew of had been successful and got the sponsorship. He had done all the representatives had asked him to do.
6. We reserved our decision.
7. It is clear from the decision in Batool that as is set out in the headnote, an extended (otherwise known as other) family member whose entry and residence were not being facilitated by the United Kingdom before 11 p.m. GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time cannot rely upon the Withdrawal Agreement or the Immigration Rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. It is also said that such a person has no right to have any application they have made for settlement as a family member treated as an application for facilitation and residence as an extended/other family member.
8. In our view that is determinative of the appeal, and can be read alongside the reasons given by the Upper Tribunal for finding an error of law in this case. As it pointed out, the application was not made under the 2016 Regulations but under the Immigration Rules - Appendix EU (Family

Permit). As such the sponsor did not fall within the definition of “family member” that might have enabled the appellant to succeed in her application.

9. The Tribunal went on to make points in relation to the possibilities of success had the application been made under the 2016 Regulations. This may be the kind of case to which Mr Tahir referred when he spoke of examples of cases which had been successful. It may be, though of course we do not have the papers before us, that those were applications made under the 2016 Regulations and not under the Immigration Rules Appendix EU (Family Permit). It is clear both from the error of law decision and from the guidance in Batool that in a case such as this the sponsor falls outside the relevant Immigration Rules, in that the relationship is not one which can lead to success under the Rules or the Withdrawal Agreement.
10. As a consequence, the appellant’s appeal against the decision of 22 January 2021 is dismissed.

No anonymity direction is made.



Signed

Date

23 December 2022

Upper Tribunal Judge Allen