**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-003211
UI-2022-003212 UI-2022-003213
UI-2022-003214 UI-2022-003216

[First-tier Tribunal Nos: EA/15846/2021
EA/15856/2021 EA/15858/2021
EA/15859/2021 EA/15860/2021]

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 24 August 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**Mr S.S.P (1)**
**Mrs J.K.P (2)**
**Mr S.S (3)**
**Mr J.S. (4)**
**Mr A.S. (5)**
**(ANONYMITY ORDER MADE)**

Appellants

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellants: Mr L Singh (Solicitor)
For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

**Heard at Birmingham Civil Justice Centre on 6 July 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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**

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**the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court**.

## DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge French promulgated on 26th April 2022, following a hearing at Birmingham on 19th April 2022. In determination, the judge dismissed the appeals of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### The Appellants

2. The Appellants are citizens of India who appeal against the decision of the Respondent to refuse their applications for entry clearance under the "EU Settlement Scheme (EUSS)", to join the sponsor, who has Portuguese citizenship, and is the father of the first Appellant, (D.O.B. 10th January 1981). The second Appellant, (D.O.B. 20th July 1985) is the wife of the first Appellant. The remaining Appellants are their children, who respectively were born on (D.O.B. 2nd August 2009); and (D.O.B. 18th July 2011) and (D.O.B. 4th July 2015). They all claim to have been entirely dependent upon the Sponsor, Mr Phuman Singh, for their essential needs, such that they fell under the EUSS system enabling them to seek entry to the UK. The Respondent was not satisfied of the claimed relationship between the Sponsor and the Appellants and he was not satisfied that the Appellants were financially dependent on the Sponsor for their essential needs as they claim to be.

### The Appellants' Claim

3. The Appellants claimed that they were indeed related to the Sponsor as suggested because there was DNA evidence produced to show that there was a 99% probability that the Sponsor was the biological father of the first Appellant. With respect to their financial dependency they maintained that between 8th February 2014 and 10th June 2021 a number of payments had been made ranging from £300 to £2,250 which served to establish their genuine dependency on the Sponsor.

### The Judge's Findings

4. The judge had evidence before him that the Sponsor, who lived in the UK with his wife and one other son, as well as a daughter who lived separately in the UK, had left the first Appellant in India. However, "the First Appellant was part of his household when the Sponsor lived in India and he continues to live in the 'ancestral home'" but that the son now "works as a taxi driver, earning 10,000 Indian rupees per month (equivalent to £100) and that it is not enough to support his family, which is why the Sponsor said he was supporting him" (at paragraph 6). There was also evidence of the Sponsor's income before the judge (at paragraph 7) and the judge noted that, "what I can establish with certain is that for the tax year ending April 2021 the Sponsor earned a total of £18,830.17", but that "this might reflect that for part of that tax year, he was unable to work because of the Covid lockdown". The Sponsor referred to the DNA report and

observed that, "this report confirms that the two swabs they have tested are father and son", but that "the First Appellant remains in India", and that "the laboratory cannot be sure of the origins of the swabs".

5. At the hearing, the judge took the opportunity to ask questions of the Sponsor. The Sponsor told him that he left India in 1995, when his son was around 14 or 15 years of age, and that he had started sending money to India from 1996 and that, "in Portugal he had been working doing plastering and brickwork", which he still continued with but that "he had not been working during the Covid lockdown for about 4 months, but said that he had savings" (paragraph 10). In closing submissions from the Appellants' representative, the judge heard that, as far as the question of the Appellants' relationship with the Sponsor was concerned, "there is a DNA report although it was accepted that there is no declaration" (paragraph 12). As far as the issue of financial support was concerned, "there is documentary evidence dating back to 2014, and the fact that the documentary evidence dating back that far is so limited is because the Sponsor did not realise that he needed to provide it" (paragraph 12).

6. In his findings of fact, the judge observed that the Sponsor had left the first Appellant behind in India in 1995 when he left to take up residence in Portugal. In 2013, having obtained Portuguese citizenship, the Sponsor came to the UK. Having arrived in the UK, the Sponsor then sponsored his wife and daughter to join him in the UK, but there was no application for the Appellant or his family to also come to the UK. There had been previous applications by the first Appellant to come to the UK, for example as a visitor, where he had not provided the correct information, and the judge observed that, "this causes me to question why I should consider him now to be a reliable witness" (at paragraph 14).

7. The judge's conclusions were that the Appellants could not succeed for two reasons. First, whereas the Sponsor, his wife and his daughter and one other son, had all left to go to Portugal, and then all acquired Portuguese nationality, the first Appellant "remained in India, which would be consistent with his not being an immediate relative". Secondly, "the DNA report can only say that the swabs tested show a familial relationship, but not that ether the swabs came from the First Appellant" (at paragraph 16). As for the financial support, "There is a lack of consistent documentary evidence as to the regular payments being made to the First Appellant", and that there were "apparently random payments in differing amounts on different dates" (paragraph 17).

8. The appeal was dismissed.

**Grounds of Application**

9. The grounds of application state that the judge erred in law because he failed to give proper and adequate consideration to the Appellants' expert DNA report, which showed the parties to be directly related. The judge had instead speculated on why the first Appellant remained in his home country and did not travel with the other family members when they went to Portugal. The grounds also asserted that the judge had made a number of unreasonable adverse findings on evidential issues which were contrary to the evidence before the Tribunal. On 6th June 2022 permission to appeal was granted by the First-tier Tribunal on the basis that "the Appellants' Expert DNA evidence was directly relevant to a central issue of the relationship between the First Appellant and the

Sponsor, and there is an arguable error of law that the Tribunal misdirected itself as to the value of that evidence, …".

## **Submissions**

10. At the hearing before me on 6th July 2023, Mr Singh began by submitting that there had been further developments in this matter since the grant of permission, namely, that the children of the first Appellant had made a separate application, and they had been issued with entry clearance, such that they were now physically present in the UK. It was clear, submitted Mr Singh, that another ECO had accepted the relationship as claimed on the basis of the DNA evidence that Judge French had found to be unpersuasive. There was now an acceptance of the relationship. Second, the judge's refusal of the DNA report on the basis that, "[the first Appellant] remained in India …" is not a rational basis for rejecting a DNA report, as there could be any number of reasons why the entire family could not have all gone together to Portugal at the same time. The evidence before the judge below was that the first Appellant at the time was just age 14 to 15 years and was not abandoned, but continued to live in the ancestral home in India.

11. For his part, Mr Bates submitted that the judge was concerned about there not having been a declaration attached to the DNA report. Secondly, the judge had not accepted the basis upon which the first Appellant, had been left behind in India, when other members of the family had been brought to Portugal. Moreover, the judge had not found the first Appellant to have been a truthful witness given his previous applications to come to the UK. The existence of financial support for essential needs had also been rejected.

## **Error of Law**

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, such that the decision ought to be set aside. My reasons are as follows. First, when the judge considers the claimed relationship he does so on the basis of the first Appellant being left behind in India when other members of the same family were not. However, this in itself is not a reason to reject the claimed relationship and has involved speculation on the part of the judge which was unwarranted.

13. Second, when the DNA report is considered in the next breath (see paragraph 16) it is said that, "the DNA report can only show that the swabs tested show a familial relationship, but not that either of the swabs came from [the first Appellant]" (paragraph 16). However, this is speculation. The DNA report concluded that the relationship between the first Appellant and his sponsoring alleged father, Mr Phuman Singh, was borne out to the degree of 99.9999%. The Appellant only has to prove his case on a balance of probabilities. He has done so. The DNA report plainly showed the relationship to be as it was contended for. The fact that, as Mr Singh before me has today submitted, the Appellant children have been issued with entry clearance certificates and have arrived in the UK, is not a matter that I need consider for the purposes of this appeal. Suffice it to say that the DNA evidence is determinative of the issue of relationship.

14. Third, that leaves the question of financial support. The evidence before the judge was sporadic. That is not unusual when remittance receipts have to be

disclosed going back a number of years. Mr Singh before me, however, has accepted that the appropriate course of action, nevertheless, is for there to be a remittal of this appeal back to the First-tier Tribunal so that that particular question can be revisited. I consider that to be a fair and proper way to resolve the remaining issues.

**Notice of Decision**

15. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal to be determined on the question of the financial support of the Appellant by the Sponsor, and to be heard by a judge other than Judge French.

16. I allow the appeal.

**Satvinder S. Juss**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**9th August 2023**