



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003630 UI-
2022-003633

First Tier No:
EA/09301/2021EA/09301/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 September 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

KHALID ZIA WARRAICH
MUHAMMAD ABDULLAH
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Not present or represented
For the Respondent: Mr Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 16 August 2023

DECISION AND REASONS

1. The appellants, Mr Khalid Zia Warraich and Mr Muhammad Abdullah, are adult citizens of Pakistan. The sponsor, Mr Mukhtar Ali, is the 1st Appellant's brother and the 2nd Appellant's uncle. The Sponsor is an Italian citizen living in the United Kingdom. The appellants applied to enter the United Kingdom (UK) as the extended family members of a European Economic Area (EEA) national. The respondent refused the applications by decisions dated 22 January 2021 and 27 January 2021. The appellants appealed on the basis that they are dependent upon the Sponsor. The First-tier Tribunal dismissed their appeals. The appellants now appeal to the Upper Tribunal.

2. Granting permission, Upper Tribunal Judge O'Callaghan wrote:

1. The appellants appeal a decision of the First-tier Tribunal dismissing their appeal against a decision to issue an EEA family permit as extended family members.

2. The First-tier Tribunal undertook a paper consideration of the appeal, as requested by the appellants. By a decision sent to the parties on 6 May 2022, the First-tier Tribunal observed that the appellants had not provided a bundle of documents to be relied upon. Additionally, the respondent's bundle was deficient for not complying with rule 23 of the First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014. I observe the reference in the decision to the 'supporting documents referred to the in [reasons for refusal letter]' not being in the respondent's bundle. These missing documents are identified at [8] of the decision as including money transfer receipts.

3. The appeal was dismissed by the First-tier Tribunal. The sole reason given was the failure of the appellants to provide documents or other evidence. No express consideration was given as to the impact of the respondent's failure to comply with rule 23 of the 2014 Rules.

4. By a decision dated 27 May 2022, Judge of the First-tier Tribunal Karbani refused the appellants' application for permission to appeal to the Upper Tribunal, observing, at [3]: '3. Having perused the file, it has been noted that directions following a prehearing review by FtTJ Austin requesting an appellant's bundle were issued on 19 January 2022. The appeal was determined on the papers on 1 April 2022 allowing ample time for compliance. Therefore, the grounds disclose no arguable error of law.'

5. By grounds of appeal filed with the Upper Tribunal, dated 26 June 2022, the first appellant states on behalf of both appellants that the directions of JFtT Austin were never received. It is further noted that the first appellant contacted the FtT on three occasions - 25 December 2021, 22 January 2022 and 28 April 2022 - seeking an update on the appeal, and the latter two contacts evidence that the directions were not received.

6. In circumstances where the respondent failed to file relevant documents in her possession relating to this appeal, I am satisfied that it is arguable that the First-tier Tribunal acted in a procedurally unfair manner in proceeding with the appeal without ascertaining that the appellants had received the directions of FtTJ Austin.

Direction

7. It is my preliminary view that the decision did involve the making of an error of law as to procedural fairness, and that the decision of the First-tier Tribunal should be set aside with a hearing. The appropriate course of action would be to remit the case to the First-tier Tribunal for a fresh determination on all issues, with the expectation that the First-tier Tribunal would issue new directions requiring the parties to file relevant evidence.

8. Unless within 14 working days of the issue of these directions there is any written objection to this course of action, supported by cogent argument, the Upper Tribunal will proceed to determine the appeal without an oral hearing and will remit to the First-tier Tribunal.

9. In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed.

3. No written objection has been received to the Upper Tribunal Judge's proposed course of action. Accordingly, I set aside the decision of the First-tier Tribunal. None of the First-tier Tribunal's findings of fact shall stand. I return the decision to the First-tier Tribunal for that Tribunal to remake the decision *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a *de novo* consideration of the evidence.

Lane

C. N.
Judge of the Upper
Tribunal
Immigration and Asylum Chamber

Dated: 16 August

2023