



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003307
First-tier Tribunal No: EA/04171/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 April 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

Abdul Haseeb Mohammed
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Determined on the papers on 7 March 2023

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Kaler promulgated on 4 April 2022, in which the Appellant's appeal against the decision to refuse his application for settled and pre-settled status under the EUSS dated 4 March 2021 was dismissed.
2. The Appellant is a national of India, born on 10 July 1985, who made an application under the EUSS on 2 November 2020 as a dependent family member of an EEA national.
3. The Respondent refused the application the basis that the Appellant did not meet the definition of a dependent relative in Annex 1 of Appendix EU and had not been issued with a family permit or residence card under the Immigration (European Economic Area) Regulations 2016 and as such did not meet the requirements for settled status as a family member of a relevant EEA citizen.
4. Judge Kaler dismissed the appeal in a decision promulgated on 4 April 2022 on all grounds. It was common ground before the First-tier Tribunal that the Appellant was required to hold a 'relevant document' to satisfy the requirements of Appendix EU to the Immigration Rules, which he did not and it was found that the Respondent was not required to consider whether the Appellant's application under the EUSS should have been made under any other provision.

The appeal

5. The Appellant appeals on the ground that the First-tier Tribunal erred in law in failing to determine whether the Respondent's decision breached any of the Appellant's rights under the Withdrawal Agreement. Specifically, that the First-tier Tribunal did not consider whether the Respondent should have treated the EUSS application, made before the specified date, as if made under the Immigration (European Economic Area) Regulations 2016 and that the Withdrawal Agreement included a positive obligation on the Respondent to help applicants prove their eligibility and give an applicant the opportunity to correct any deficiencies, errors or omissions to ensure the decision is not disproportionate.
6. Permission to appeal was granted by First-tier Tribunal Judge Povey in a decision dated 21 June 2022 on the basis that it was arguable that the Judge erred in failing to determine a possible ground of appeal under the Withdrawal Agreement, or arguably erred in failing to provide adequate reasons in relation to it.
7. The grant of permission to appeal was prior to the decision of the Upper Tribunal in Batool and others (other family members: EU exit) [2022] UKUT 00219 (IAC) in which it was held:
 - (1) *An extended (ako other) family member whose entry and residence was not being facilitated by the United Kingdom before 11pm 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.*
 - (2) *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. On 21 November 2022 I issued directions to the parties making reference to the case of Batool and indicating a preliminary view that for the reasons set out in that decision, there is no material error of law in the First-tier Tribunal's decision for failure to consider whether the decision breached the Withdrawal Agreement in circumstances where the appeal could not possibly succeed on that basis because the Appellant's entry and/or residence was not being facilitated before 31 December 2020, nor had the Appellant made any such application for the same. The parties were invited to make written submissions if opposed to the proposed course of action of dismissing the appeal on the basis that there was no material error of law in the First-tier Tribunal's decision. Neither party has made any submissions objecting to the proposal and in the circumstances, it is in the interests of justice to issue a written decision on the papers pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Findings and reasons

9. For the reasons already set out above, there was no material error of law in the First-tier Tribunal's decision for failing to consider whether the Respondent's decision breached the Withdrawal Agreement or should have been treated by the

Respondent as an application under the Immigration (European Economic Area) Regulations 2016. For the reasons set out in Batool, those arguments could not possibly have succeeded before the First-tier Tribunal on the facts of this case.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7th March 2023