



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2022-006251

EA/08071/2021

EA/08069/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On the 12 October 2023

Before

**UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY JUDGE OF THE UPPER TRIBUNAL BLACK**

Between

MS SHAZIA PARVEEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY DIRECTION NOT MADE

Representation:

For the Appellant: Mr Youssefein, Counsel instructed by West London Solicitors Ltd

For the Respondent: Mr A.Basra, Senior Home Office Presenting Officer

Heard at Field House on 05 September 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 14th March 2022 by First-tier Tribunal Judge Bashir (“FtT”) determined on the papers which refused the appellant’s appeal against a decision of the respondent refusing their applications for family residents permits made under the Immigration (European Economic Area) Regulations 2016. The main appellant is Ms Parveen (EA/08071/2021). Although the decision refusing Ms Parveen’s application appears to have been taken in tandem with decisions refusing at least two of her dependent children (ZN, born on 1 October 2010 (EA/03194/2023); FN, born on 14 June 2007 (EA/03193/2023)), each of

whom appealed, neither were listed as parties to the appeal in the judge's decision. Their appeals appear not to have been subject to any judicial determination by the First-tier Tribunal. The FtT's decision also appeared to feature an EA reference for the appellant's adult brother, Mr Mohammed Qasim Aslam, but the FtT did not address any of his operative findings to the issues, whatever they were, in Mr Qasim's appeal. We say that the FtT's decision *appeared* to feature the EA number in Mr Qasim's proceedings (EA/08069/2021) because the judge embedded part of that EA reference in the reference number for Ms Parveen's appeal, on the first page of his decision, in the following form: "Appeal Number: EA/08071/08069/2021". The FtT's operative findings only dealt with Ms Parveen's appeal.

2. On the basis of the information presently before the Upper Tribunal, it appears to us that the only appeal which has been finally determined is that of Ms Parveen (EA/08071/2021). For reasons we set out below, we have decided that the judge's decision in relation to Ms Parveen's appeal involved the making of an error of law and will be set aside with no findings of fact preserved, to be remitted to the First-tier Tribunal to be heard by a different judge. It will be a matter for the First-tier Tribunal as to what case management directions will then be appropriate, and the extent to which (if at all) any of the three appeals should be linked with Ms Parveen's remitted appeal.
3. The appellant is a citizen of Pakistan. The sponsor is her uncle, who is an EEA citizen exercising Treaty Rights in the UK.
4. In a decision and reasons, the FtT considered the evidence in relation to the appellant and concluded that there was no evidence provided as to financial circumstances and accordingly the claim had not been substantiated [22]
5. In the decision the FtT incorrectly referred to the sponsor as the appellant's father whereas he was her uncle [1]. The FtT at [13] set out the appellant's claim that she was living with her husband and three children. The names given in the decision appear to show that the appellant had 4 children and not three as stated in the decision.
6. In grounds of appeal the appellant argued that the FtT erred firstly, by making findings based on incorrect factual information, namely that the appellant has dependent children and is living with her husband. She is in fact a widow with 4 dependent children, as evidenced before the FtT.
7. Secondly, the FtT erred by finding that there was no evidence of family circumstances to show financial dependency for their essential needs. Reliance was placed on documentary evidence that was before the FtT that the appellant did not pay income tax and lived in her brother's house.
8. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Chowdhury on both grounds.

9. In a Rule 24 response the respondent did not oppose the appeal and was content for the matter to be reheard in the UT.
10. Before us, Mr Basra confirmed for the respondent that the appeal was unopposed in respect of both grounds. It was conceded that the FtT erred in law as to the factual nexus and failed to take into account material documentary evidence adduced before the FtT. We indicated that this was also our view and canvassed the parties for their views on disposal.
11. Mr Youssefein requested that the appeal(s) are/is remitted to the First-tier Tribunal for rehearing de novo. The appellants have instructed new representatives and wish to have an oral hearing. Mr Basra was content to leave this to the Tribunal to decide.

Discussion and conclusion

12. We are satisfied that the grounds raise errors of law and that the FtT did indeed make a material factual error in setting out at [13] that the appellant was married and living with her husband whereas the documentary evidence submitted showed that she was a widow. For the hearing before the FtT the appellant provided an affidavit setting out her family relationships and circumstances. Further, we are satisfied that the FtT failed to take into account this documentary evidence relevant to the question of financial support including a tax certificate for the appellant and a certificate of residence confirming that she resides in a property owned by her uncle/sponsor. We further note that the FtT made no reference to the second appellant at all despite being seized of that appeal.

Decision & Direction

13. There is a material error of law and the decision is set aside. The appeal is remitted to the First tier Tribunal for an oral hearing de novo (excluding Judge Bashir).

We direct that this appeal is referred to the Resident Judge at Bradford for case management directions in light of the matters we discuss at paragraphs 1 and 2, above.

Signed

Date 3rd October 2023

GA Black
Deputy Judge of the Upper Tribunal