



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

Case No: UI-2023-004387

First-tier Tribunal No: EA/08228/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 29 December 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**AN ENTRY CLEARANCE OFFICER**

Appellant

**and**

**NAYAB RAZA**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Bates, a Senior Home Office Presenting Officer.  
For the Respondent: No appearance.

**Heard at Manchester Civil Justice Centre on 21 December 2023**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Jepson ('the Judge') promulgated on 23 June 2023, following consideration of the merits of the appeal on the papers, in which the Judge allowed the appeal.
2. There was no appearance on behalf of the above respondent. I am satisfied there has been valid service of a notice specifying the date, time, and place of hearing to the last notified addresses for service of any documents relating to this appeal. There has been no application for an adjournment, no explanation for the non-attendance, and nothing when considering the interests of justice and fairness to warrant anything other than the Tribunal proceeding to consider the merits of the appeal. Although the above respondent is in Pakistan her husband lives in the UK.
3. The above respondent is a national of Pakistan born on 12 August 2002. She applied for a Family Permit under Appendix EU of the Immigration Rules which was refused in a decision dated 19 May 2022 for the following reasons:

Reasons for Refusal

On 15 December 2021 you made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU(Family Permit)to the Immigration Rules on the basis you are a 'family member of a relevant EEA citizen'.

I have considered whether you meet the validity, eligibility and suitability requirements for an EUSS Family Permit, which are set out in Appendix EU (Family Permit) to the Immigration Rules (<https://www.gov.uk/guidance/immigration-rules/appendix-eu-familypermit>). You can also find out more about the requirements in the guidance on GOV.UK (<https://www.gov.uk/family-permit/eu-settlement-scheme-family-permit>).

You have provided evidence that the person you have stated is acting as your sponsor for this application is a citizen of Pakistan, a country outside of the European Economic Area (EEA) and Switzerland.

As your sponsor is not an EEA national they cannot be considered as a 'relevant EEA citizen' as stated in Appendix EU (Family Permit) to the Immigration Rules. Therefore, you are not eligible to apply for the EUSS Family Permit.

Your application is therefore refused.

4. Having considered the documentary evidence the Judge writes:

12.) Although no specific concession is made, the refusal does not take issue with the assertion that that Appellant and sponsor are married. The only argument appears to be whether the sponsor is an EEA national.

13.) The Italian passport provided for the sponsor does post-date the point of application. Take in isolation, one might think that means there is insufficient evidence to show the sponsor was an EEA national at that point.

14.) However, that is not the entirety of the evidence. There is also the grant of settled status. That pre-dates the point of application here. In order to have been given such status, the sponsor must at that point (status was given November 2021) have been an EEA national. Such grant pre-dates the date of application (15th December, 2021.)

15.) For that reason, in my judgment the sponsor was an EEA national at point of application. In the absence of other contested matters, the appeal therefore must succeed.

5. The ECO sought permission to appeal asserting the Judge made a mistake as to a material fact for the following reasons:

a) It is respectfully submitted that the First Tier Tribunal Judge (FTTJ) has materially erred in law by finding that the sponsor in the appeal was an Italian national, and therefore an EEA national, at the time of the Appellant's application.

b) At [13] of the determination the FTTJ accepts that the sponsor's Italian passport was issued post decision. Therefore, the FTTJ accepts that the evidence demonstrates that the sponsor was not an Italian national at the date of application.

c) At [14] of the determination the FTTJ finds the following (emphasis added), "However, that is not the entirety of the evidence. There is also the grant of settled status. That pre-dates the point of application here. In order to have been given such status, the sponsor must at that point (status was given November 2021) have been an EEA national. Such grant pre-dates the date of application (15th December, 2021.)"

d) It is respectfully submitted that the FTTJ has mistakenly conflated the grant of status under the EUSS scheme as being confirmation of an acceptance of the sponsor being an EEA national at the time of the grant of status. It is submitted that this finding overlooks the ability to obtain settled status as a third country national. It is submitted that this is the basis on which the sponsor was granted status under Appendix EU on 3 November 2021. It was not made on the basis of an acceptance that the sponsor was an EEA national.

e) It is submitted that the FTTJ has therefore relied on a mistaken assumption that the sponsor was accepted as being an Italian national at the time he was granted

settled status. It is submitted that this error has had a material effect on the outcome of the appeal and the decision should be set aside as a result.

6. Permission to appeal was granted on a resumed application by Upper Tribunal Judge Gill, on 30 October 2023, on the basis it is said to be arguable that the First-Tier Tribunal Jepson may have erred in law by mistakenly assuming that the sponsor could only have been granted settled status under the EUSS Scheme if he was an Italian national at the time that he was granted settled status. If he did are in law by making that assumption, it is arguable that the error is material to the outcome.

#### Discussion and analysis

7. As noted, the above respondent asked for the appeal to be determined on the papers. The documents included a copy of the application made on 15 December 2021 under the category of being a close family member of an EEA or Swiss national with a UK immigration status under the EU Settlement Scheme, or who would have qualified for it were they able to apply before July 1, 2021.
8. The above respondent was proposing to join her husband who she married under an arranged marriage on 30 August 2020. Her husband's name and date of birth of 19 December 2091 is provided together with his country of nationality which is stated as being Pakistan.
9. There also was before the Judge a copy of the above respondent's husband's Pakistan passport issued on 27<sup>th</sup> March 2019, valid to 25 March 2024, together with his Residence Card showing he had been granted pre-settled status under the EUSS issued on 4 August 2021 valid to 31 August 2024. This appears to be endorsed in his Pakistan passport.
10. There is also within the bundle a copy of an Italian passport granted to the above respondent's husband issued on 2 August 2022. The Judge does not appear to have been referred to any document showing when the application for Italian citizenship was made or the basis on which the above respondent's husband claimed to be entitled to, and was recognised as, an Italian citizen.
11. It is clear that the issue of the Italian passport post-dates not only above respondent's application but also the refusal in which the lack of evidence of the above respondent's husband status as an EU citizen was highlighted.
12. As noted in the grounds seeking permission to appeal, the above respondent's husband was not granted pre-settled status on the basis he is an EU citizen. The finding of the Judge therefore that he was is infected by a material error of law due to a material misdirection for the reasons set out in the grounds seeking permission to appeal.
13. In light of the evidence summarised above showing that at the date of application and decision the above respondent could not succeed as she was not a close family member of an EEA or Swiss national with UK immigration status under the EUSS, or a person entitled to it if they were to apply before 1 July 2021, the appeal must fail. I set the determination aside.
14. I substitute a decision to dismiss the appeal for the reasons set out in the ECO's decision which has not been shown to be wrong or contrary to the law.

#### **Notice of Decision**

15. Appeal dismissed.

Judge of the Upper Tribunal

**C J Hanson**  
**21 December 2023**

Immigration and Asylum Chamber