



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003772

First-tier Tribunal No: EA/02810/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7 September 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

EHSAN ULLAH
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Sponsor (in person)

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

Heard at Manchester Civil Justice Centre on 24 August 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 22 December 1991. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for an EU Settlement Scheme (EUSS) Family Permit as the family member of a relevant EEA citizen.

2. On 24 August 2021 the appellant applied for an EUSS Family Permit to join his spouse, Rashida Liaqat (the sponsor). His application was refused on 28 February 2022 on the grounds that he did not meet the eligibility requirements for an application on

that basis since his sponsor was not an EEA citizen and could not be considered as a “relevant EEA citizen” as stated in Appendix EU (Family Permit) to the Immigration Rules. That was because the evidence he had provided for the sponsor showed that she was a citizen of Pakistan.

3. The appellant appealed against the respondent’s decision on the grounds that his sponsor had been granted pre-settled status under the EUSS and that at no point did the application state that the sponsor had to be an EEA national, but that it only asked for the EUSS number, which was provided.

4. The appeal came before First-tier Tribunal Judge Moxon on 11 July 2022 as a paper case. The appellant did not request an oral hearing. Judge Moxon considered that the appellant had to have applied to join a relevant EEA national or British citizen in order to satisfy Appendix EU to the immigration rules, whereas the sponsor was a Pakistani national with pre-settled status and he therefore could not qualify under the immigration rules. The judge found there to be insufficient evidence to show that the appeal could succeed on Article 8 grounds outside the immigration rules. He accordingly dismissed the appeal.

5. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had made a mistake and that his sponsor was a relevant sponsor for him to come to the UK as she had leave under the EUSS.

6. Permission was granted in the First-tier Tribunal.

7. The matter then came before me. The sponsor, Ms Liaqat appeared before me with her brother who assisted her.

8. Mr Tan submitted that the judge’s decision was not wrong in law and that the appellant could not succeed because the sponsor was not an EEA citizen or British citizen. The sponsor, through her brother, insisted that the appellant was eligible to apply because she had EUSS leave. I advised the sponsor and her brother that the appellant’s application could not succeed for the reasons given by the judge and that there was no error of law in his decision. They did not accept that that was correct so I referred them to Appendix EU (Family Permit) FP1 and FP6(1) and (2) which made it clear that the sponsor had to be an EEA citizen or a British citizen.

Discussion

9. As I advised the sponsor, her husband could not satisfy the eligibility requirements in Appendix EU (Family Permit) to be issued with an EUSS Family Permit as a family member because she was not an EEA national, and thus a “relevant EEA citizen”, and she was not a British citizen. The fact that she had pre-settled status under the EUSS did not assist the appellant. Judge Moxon therefore properly found that the appellant could not meet the requirements of Appendix EU (Family Permit) and was not entitled to an EUSS Family Permit. The appellant’s grounds assert that the judge made a mistake, but he quite simply did not. The judge, furthermore, properly found that the appellant could not succeed on Article 8 grounds. No Article 8 claim had been made and there was no consent provided by the respondent for that to be relied upon as a new matter. In any event there was no basis for the appellant to succeed on such grounds on the evidence available.

10. Accordingly there is no merit in the grounds and it is not clear why permission was granted in the first place. The judge was fully and properly entitled to dismiss the appeal on the basis that he did. I uphold his decision.

Notice of Decision

11. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 August 2023