Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers:
UI-2023-001799 & UI-2023-001800
EA/11650/2022 & EA/11980/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 August 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between
MR GURI TAFA
MRS MARGARITA TAFA
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Trussler, instructed by Turpin & Miller LLP
For the Respondent: Ms Lecointe, Home Office Presenting Officer

Heard at Field House on 4 July 2023

DECISION AND REASONS

Background

1. The Appellants applied on 16 August 2022 for status under the EU Settlement Scheme ("EUSS"), saying they were the dependant parents of their son, Christos Tafa ("the Sponsor"), who is a EEA citizen of Greek nationality.

2. In letters dated 7 November 2022 and 21 November 2022 respectively ("Refusal Letters"), the Respondent refused their claims.

3. The Refusal Letter in respect of the Second Appellant said she did not meet the requirements for settled status on the basis of a continuous qualifying period of five years that commenced prior to 31st December 2020 in accordance with rules EU11 and EU11A of Appendix EU to the Immigration Rules; whilst there was evidence that she had resided in the UK periodically between November 2021 and October 2022, this was a period of less than five years. This assessment was not undertaken in respect of the First Appellant for reasons unknown.

4. Otherwise the Refusal Letters are substantively the same, saying for both Appellants that insufficient evidence had been provided to show that they were dependant on the Sponsor in order to have completed a continuous qualifying period of less than five years in accordance with rules EU14 and EU14A of Appendix EU to the Immigration Rules; they needed to evidence dependency as their applications had been made after 1 July 2021.

5. The Appellants appealed.

6. Their appeals were dismissed by First-tier Tribunal Judge Suffield-Thompson ("the Judge") in a decision promulgated on 3 April 2023, having been heard at Birmingham on 23 March 2023. The first page of the decision erroneously refers to it having been decided on the papers when it is clear that a hearing took place. The First Appellant and the Sponsor attended the hearing and were cross-examined, the First Appellant having the assistance of an (presumably Albanian) interpreter.

7. The Judge's consideration of the evidence and her findings are set out at paragraphs [25] – [33] of her decision, the findings being as follows:

> [28]. I find that the date of application is key in this appeal. Had they made their application before 1 July 2021 they would not have had to show dependency, but they did not.

[29]. I find that we have no evidence pertaining to the financial cristates *(sic)* [circumstances] of the Appellants in Greece. We had no tenancy agreement for the rented property, utility bills, medical bills or evidence of income from work done. We have no evidence of the what the Appellant and his wife earned but the Appellant was clear that he earned enough to pay his rent, bills and keep his family from his own income.

[30]. I had before me a letter from the Sponsor (RB, pages 75-76) which states that he started working at a young age in Greece and contributed to the household but nowhere has it been shown that the Appellants could not manage their expenses without the Sponsor's contribution and this was not what Appellant 1 has said anywhere in his written or oral evidence. It is clear from the Sponsor's letter that the reason they have come to the UK is because life in Greece became economically hard and so :

"that is why we decided to enter and establish a new life in the UK".

Although he states his parents were his dependents there is no evidence of this at all before the Tribunal. In particular there was no evidence of money transfers to the Appellants, payments to them from his bank count or other evidence to say that he paid the rent or bills in Greece. Appellant 1 had also told the Tribunal that he paid all the bills for his family when they were in Greece.

[31]. The Appellant I find was not honest about their situation with regards to work in the UK. He was initially evasive and then ended up not being honest in his evidence as he said he had not worked in the UK as he did not have the required documents. However, he said that his wife had applied for their national insurance numbers as soon as she came to the UK. He also said his wife had not worked in the UK and had no planned to. None of this was true as to his credit the Sponsor was very honest in his evidence and stated both Appellants had worked full time from the time they came here and that only in the last month had Appellant 1 dropped his hours for this case on the advice of their solicitor.

[32]. Appellant 1 said they came here as they were struggling financially and wanted a better life and yet they still rent a house in Greece and pay the bills on it and clearly have the funds to pay for flights to see their other son when they want to go and visit.

[33]. The evidence shows that the Appellants were both working in Greece, Appellant 2 on and off and Appellant 1 full time for the whole time he was there. They have arrived in the UK and have both been working here full time and Appellant 1 has only reduced his hours four weeks ago, which is clearly a temporary measure. I do not find that there is any evidence of dependency upon the Sponsor at the time of the application or after. It is clear that the Appellants wanted to come to the UK for better work opportunities but had no need of the Sponsor's financial assistance.

8. The Appellants appealed this decision on two grounds:

(a) the Judge misdirected herself with regard to the relevant law; this was an appeal against the refusal of pre-settled status and not a family permit as the Judge deliberated; and

(b) the Judge failed to give a proper and full consideration of the evidence.

9. Permission to appeal was granted by First-tier Tribunal Judge Lawrence on 10 May 2023, stating:

> 1. The applications are in time.
>
> 2. It is arguable that the Judge materially erred in law in relation to whether the Appellants were required by immigration rules to establish dependency on an EU national family member.
>
> 3. Permission is given on all grounds.

10. No response was filed by the Respondent.

The Hearing

11. The appeal came before us on 4 July 2023.

12. Prior to submissions, it was agreed that the Appellants needed to show dependency as, although they had been granted family permits allowing them to enter the UK, these had expired prior to the date on which their applications had been made (16 August 2022). This date fell after 1 July 2021 meaning, under Appendix EU to the Immigration Rules, dependency would not be assumed and needed to be proved. Mr Trussel said he had not previously noticed that the permits had so expired and we accept this.

13. It was also agreed that the rules applicable to the Appellants were contained in EU14 an EU14A of Appendix FM and that the Judge had incorrectly cited the provisions of Appendix EU (Family Permit).

14. The parties went on to differ in their interpretations of the decision and whether a material error/errors of law had occurred.

15. It serves no purpose to recite the submissions here at length as they are set out in the record of proceedings.

16. Essentially, Mr Trussell expanded on the grounds of appeal. He said that not only had the Judge erred in her application of the law, but she had also failed to consider the evidence of dependency which is at pages 28-44 of the Appellant's bundle submitted to the First-tier Tribunal. He said the Judge's finding that there was no evidence of dependency 'at all' was simply incorrect, although he was candid in admitting that this evidence was not particularly substantial as the Appellants had proceeded on the basis that, having been granted family permits on the basis of dependency previously, they did not need to prove it for the purposes of the applications. He also said the Judge had made findings about the First Appellant's credibility on an erroneous basis and overall, none of the findings could be preserved.

17. Ms Lecointe agreed that the Judged cited the incorrect provisions of the EUSS but said that the Judge went on to consider dependency nevertheless. As such, any error(s) were not material and her findings concerning both dependency and credibility could stand.

18. As regards what the parties were asking us to do in the event that the decision had to be set aside, both agreed that it could be retained for remaking in the Upper Tribunal but neither was in a position to proceed before us. Mr Trussell said the Appellants would like to put in further evidence and they also required an Albanian interpreter to give oral evidence. Ms Lecointe said she would need time to prepare for cross examination.

19. At the end of the hearing, we reserved our decision.

Discussion and Findings

20. As the parties agree, we find the Judge cited the incorrect law. At the time of the applications, both Appellants were already in the UK, having previously been granted family permits allowing them to enter. The Refusal Letters are clear in saying the applications had been assessed under paragraphs EU11, EU11A, EU14 and EU14A of Appendix EU to the

Immigration Rules, presumably to reflect the fact that the Appellants were applying from within the UK. The Applications confirmed that the Appellants had been in the UK for less than five years at the time. Because of this and the basis on which they were applying, and having reviewed the relevant provisions in detail, it appears they could only have come within rule EU14A of Appendix EU.

21. At [3] the Judge cites the correct legal basis of the appeal, being the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. However, she goes on to incorrectly summarise the Refusal Letters at [4], saying:

> "In summary, the Respondent refused the application 22 November 2022 on the basis that firstly, the Appellants had not demonstrated they were the dependent family members of their EEA sponsor, as set out in Appendix EU (Family Permit) ('Appendix EU(FP)') of the Immigration Rules".

22. She then states the incorrect issue to be decided at [5] and sets out the incorrect provisions of the EUSS at [7], [8] and [9]. Her application of the law is therefore wholly wrong. Whilst the provisions of Appendix EU and Appendix EU (Family Permit) can be said to be similar, they are not identical.

23. Overall, the Judge undertook no, or an inadequate, analysis of the correct provisions of the EUSS to be applied given the Appellants had been granted a family permit which had expired by the time their applications for leave as dependant parents came to be made.

24. Had the Judge applied the correct provisions, it cannot be said with certainty that she would have arrived at the same findings such that this error is material.

25. We also cannot see that any assessment was undertaken as to the basis on which the Appellants had been granted their family permits in the first place. The permits were granted on 5 October 2021 and the Judge states at [26] that the applications for them had been made on 14 June 2021.

These facts have not been challenged. As the applications for the permits were made prior to 1 July 2021, the Appellants may well not have needed to have proved dependency at the time. This is due to the definitions of 'dependant parent' in both Appendix EU and Appendix EU (Family Permit) saying that dependency is assumed where the date of application is before 1 July 2021. If the Appellants' dependency was so assumed, then their argument that they had proved dependency once such that they did not need to prove it again would have been subject to question and potentially goes to credibility. Whilst we accept Mr Trussell in saying that he had not noticed the family permits had expired, the Appellants could have been expected to know whether or not they previously had to provide evidence of dependency such that this was a topic to be explored in the decision.

26. There is provision in Appendix EU under (c)(i) of the definition of 'dependant parent' that states that a dependant parent applicant has to meet no requirement as to dependency where they were "previously granted limited leave to enter or remain under this Appendix as a dependent parent, and that leave has not lapsed or been cancelled, curtailed or invalidated". We cannot see that either the Appellants or Respondent expressly cited this provision at any point before the First-tier Tribunal or before us. It could have formed the basis for the Appellants' argument that they had already proved dependency once so did not need to prove it again but this is not made clear. Had the Judge assessed the applications against this provision, it would have been clear that such an argument did not hold good as the previous leave had lapsed by the time of the applications under appeal.

27. An analysis was therefore required of the basis on which the previous family permits had been granted, and the date on which they expired as against the date on which the applications under appeal were made. We consider the failure to conduct this analysis undermines the integrity of the Judge's decision as a whole.

28. As to dependency, we find there was an assessment made by the Judge in [29] – [33] and that in [25] she refers to the correct test. However, she errs in [26] in saying this fell to be assessed at the time the Appellants applied for their family permits on 14 June 2021, when the refusals being appealed were in respect of the later applications made in August 2022. We also find she errs in saying in [30] that "Although he [the Sponsor] states his parents were his dependents there is no evidence of this at all before the Tribunal". There was in fact evidence in the form of witness statements from both Appellants and the Sponsor as to what support had been provided prior to, and since, the Appellants came to the UK. Whilst the Judge may have alternatively meant that what evidence there is was unsatisfactory, she does not say this and it is not for us to read deeper meaning into words which are otherwise quite plain.

29. As regards the credibility findings made against the First Appellant in [31] – [33], whilst these appear reasonable and open to the Judge to make, we do not have before us a record of the proceedings to assess them against what was said at the hearing, and as above, we have found the entire basis for the decision to have been flawed such that we consider it would be unfair to preserve any of its findings.

30. To conclude, we find the grounds of appeal to have been made out. The decision reveals errors of law which are material. We find these errors infect the decision as a whole such that it cannot stand.

Conclusion

31. We are satisfied the decision of the First-tier Tribunal did involve the making of material errors of law for the reasons identified.

32. Given that the errors identified undermine the findings as a whole, none of the facts found can be sustained.

33. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature

and extent of the findings to be made and that the incorrect law was previously applied, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Notice of decision

1. The decision of the First-tier Tribunal involved the making of errors of law and we set it aside.

2. We remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.

Signed: L. Shepherd Date: 28 July 2023

Deputy Upper Tribunal Judge Shepherd