



Upper Tribunal
(Immigration and Asylum Chamber)

Case No: UI-2023-003244

First-tier Tribunal No: EA/12076/2022

THE IMMIGRATION ACTS

Heard at Field House
Heard on 3 October 2023
Prepared on 3 October 2023

Decision & Reasons Promulgated
24th October 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR CONSTANTENOS MICHAEL AMARAL YIASSEMI
(Anonymity order not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appeared in person
For the Respondent: Mr T Melville, Home Office Presenting Officer

DECISION AND REASONS

1. Although the appeal before us was brought by the respondent we shall continue to refer to the parties as they were known at first instance in the interests of clarity.

The Appellant

2. The appellant is a citizen of Portugal born on 18 May 1984. On 7 September 2022 he arrived in the United Kingdom and shortly thereafter on 20 September 2022 he applied for leave to remain under the European Union Settlement Scheme. By a decision dated 24 October 2022 the respondent refused that application on the grounds that the appellant could not show he was a family member of his sponsor his father, an EEA citizen, because the appellant could not show he was dependent on his sponsor. The Appellant was thus not joining a family member pursuant to appendix EU paragraphs 11 and 11A.

The Proceedings in the First-tier

3. The appellant appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Adio sitting at Hatton Cross on 24 May 2023. The judge allowed the appeal finding that the appellant was dependent upon his sponsor, see [12] of the determination. The respondent in turn appealed that decision on two grounds.
4. The first ground was that the appellant needed to show two things firstly that he was dependent or a member of the household of his sponsor before entering the United Kingdom and secondly that he was dependant or a member of the household after entering the United Kingdom. The respondent submitted that the appellant could not show the first condition relating to the appellant's time before arriving in the United Kingdom because the judge had found that the appellant was able to take care of basic needs from the appellant's own resources The appellant was in South Africa before coming to the United Kingdom and was running a business.
5. The second ground was that the judge had given inadequate reasons for saying that the appellant was now dependent on his sponsor given that the appellant must have received money from the sale of the business in South Africa. Permission to appeal was granted by the First-tier on the grounds that the appellant could not show he was a dependent given the judges other findings in respect of the appellant's financial resources.

The Hearing Before Us

6. As a result of the grant of permission the matter came before us to determine whether there was a material error of law in the First-Tier Tribunal's decision such that it fell to be set aside. If there was we would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
7. At the hearing the appellant appeared in person. For the respondent it was argued that the appellant had been cross examined at the hearing at first instance on the whereabouts of business accounts for his South African business and that issue had

not been dealt with by the judge. The appellant now claimed that he had brought £100 pounds with him but there was nothing in the determination about the money in South Africa. The appellant had to demonstrate that he could not meet his financial needs and in granting permission to appeal the First-tier Judge relied on the issue of dependency. At the conclusion of submissions we indicated to the parties that we did not find a material error of law in the decision of the First-tier Tribunal and that we would give our reasons in writing in due course which we now do in this determination.

The Relevant Law

8. The concept that an appellant must show dependency or living in the same household both before entering the United Kingdom and afterwards was originally derived from the case law under the EEA 2016 regulations. Following the departure of the United Kingdom from the European Union, Appendix EU to the Immigration Rules now deals with applications for leave to remain and sets out the basis on which an EEA citizen and their family members, will, if they apply under it, be granted indefinite leave to enter or remain or limited leave to enter or remain. An applicant will be granted indefinite leave to remain as a joining family member of a relevant sponsor where the applicant meets the eligibility requirements for indefinite leave to remain in accordance with paragraph EU11.
9. A dependant relative is defined inter alia as a relative of their sponsoring person; and
is, or (as the case may be) for the relevant period was, a dependant of the sponsoring person, a member of their household or in strict need of their personal care on serious health grounds. Dependency itself is defined as a situation where having regard to their financial and social conditions, or health, the applicant cannot, or (as the case may be) for the relevant period could not, meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen and there is no need to determine the reasons for that dependence or for the recourse to that support.

Discussion and Reasons

10. The issue in this appeal is whether the First-tier judge had appropriately looked at all the evidence and made findings which were rationally open to him. On the basis of the judge's findings which start at [12] of the determination we are satisfied that the judge has done enough to justify his conclusions. He accepted the evidence of the appellant and the two family members (sponsor and appellant's brother) that dependency was established. The judge dealt with the issue as to whether there was documentary corroboration for the appellant's claim of dependency, noting bank statements and internet chat and held that the consistency in the evidence between the three family members met the objection of the respondent of a lack of documentary support for the submission of dependency, see [11].

11. It was a matter for the judge who had the benefit of seeing the witnesses whether he accepted them as truthful. The judges view was that they were credible and that he could rely on the evidence that the appellant was dependent on the sponsor. There was some evidence of remittances, the appellant was evidently living free of charge in the sponsor's accommodation and the judge considered it reasonable to draw the conclusion from that that the sponsor would also be supporting the appellant with food and other necessities, see [11]. Ultimately this was a reasons based challenge and we find that the judge did give sufficient reasons to explain why he accepted that the appellant was now a dependent on the sponsor.

12. That the appellant was not a dependent of his sponsor whilst living in South Africa relevant under 2016 Regulations was irrelevant under Appendix EU. During the hearing the respondent conceded that the judge's findings on a lack of dependency while the appellant was in South Africa was not determinative of the appeal. The judge's summary of the evidence surrounding that period of time (which made clear that the appellant could not have been dependent) did not make any substantive difference to the outcome of the case. Although both we and the judge at first instance would have benefited from a more detailed exposition of the relevant provisions of the immigration rules relating to EUSS applications and the issue of dependency, we had sufficient before us to be able to reach a conclusion on whether there was a material error of law. We find that there was no such error in the decision of the First-tier tribunal which therefore stands. We dismiss the respondent's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and we dismiss the respondent's onward appeal.

Respondent's appeal dismissed

We make no anonymity order, no such order was made at first instance and there is no public policy reason for so doing.

Signed this 5th day of October 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge