IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case Nos: UI-2023-001233
UI-2023-001234 & UI-2023-001235
First-tier Tribunal Nos:
EA/05355/2022
EA/11226/2022 & EA/11230/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9th February 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL
UPPER TRIBUNAL JUDGE OWENS

Between

MISS ADRIANA ABOAGYEWAA ADJEI DUAH
MISS ARKOWAA ADJEI DUAH
MASTER DA ROCHA ADJEI DUAH
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr H Kannangara, instructed by Direct Access
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 9 January 2024

DECISION AND REASONS

1. The appellants appeal with permission against a decision of First-tier Tribunal Judge Gribble promulgated on 12 January 2023, dismissing their appeals against the refusal of applications made on 3 December 2021 under Appendix EU-FP for family permits to join their mother (Ms Duah, the "sponsor") and her husband in the United Kingdom. Ms Duah is married to a citizen of the Netherlands, Mr Sarfo, and has been since 2015. Importantly in this case, Mr Sarfo had applied for settled status in the United Kingdom under Appendix EU on 17 January 2020.

© CROWN COPYRIGHT 2024

2. The applications were refused on 16 May 2022 on the basis that, at the time of the decision, the EEA citizen sponsor, that is Mr Sarfo, did not have settled or pre-settled status under the EU Settlement Scheme and thus was not a relevant EEA citizen under that Appendix.

3. The appeals were brought under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("Citizens Rights Regulations").

4. The judge dismissed the appeal having had regard to Appendix EU which she refers to at paragraphs 10 to 14 of her decision. The judge concluded having heard evidence from Ms Duah that they were lawfully married but that when the application was made (which is when the requirements must be met) he did not have leave to remain under the EU Settlement Scheme (the "EUSS") nor when the application was decided; and, although Ms Duah did have pre-settled status before the date of decision, that was not relevant. The judge concluded that it was deeply unfortunate there had been a delay in granting Mr Sarfo status to remain in the United Kingdom, however the rule was clear and that a relevant sponsor must be someone who had status under the EUSS at the time of application, which was not the case here.

5. The appellants sought permission to appeal against that decision. Permission was granted by Upper Tribunal Judge Owens.

6. We are grateful to Ms McKenzie and Mr Kannangara for having agreed that the decisions of the First-tier Tribunal involved the making of an error of law, in that the judge had referred to Appendix EUSS of the Immigration Rules rather than the applicable rules set out in Appendix EU-FP. There are, as we will go on to explain, important differences between these two appendices, not least of which is that Appendix EU relates to people who are seeking confirmation of their right of residence in the United Kingdom whilst Appendix EU-FP is the route by which people outside the United Kingdom are seeking leave to enter to join family here who have been granted status under Appendix EU or otherwise have EU residence rights in some cases.

7. It is we think sensible to set out the law in some detail in this case. It is governed by Appendix EU-FP. Broadly, there are three requirements which have to be satisfied. First, there are suitability requirements: the applications must be valid. Second, applicants, in this case the appellants, have to meet the eligibility criteria. It is not in dispute in this case that valid applications were made or that the suitability criteria are met. The third requirement is eligibility.

8. In order to obtain an entry clearance under Appendix EU-FP the eligibility requirements are that the applicant must be a "family member of a relevant EEA national". "Family member of a relevant EEA national" is defined. It is accepted that in this case the category which applies is that set out in paragraph (e) of the definition set out in the Appendix to EU-FP, that is the child or dependent parent of the spouse or civil partner of a

relevant EEA citizen, as described in subparagraph (a) and the family relationship existed before the relevant date and the relevant family relationships continue to exist at the date of application. At this point we note that it is accepted that both of those requirements are met.

9. The key issue here is whether Mr Sarfo, was a “relevant EEA citizen”. “Relevant EEA national” is defined as follows:

> relevant EEA citizen where the date of application under this appendix, that is Appendix EU, is on or after 1 July 2021.
>
> (a) an EEA citizen (in accordance with sub-paragraph (a) of that entry in this table) who:
>
> > (i)…
> >
> > (ii)…
> >
> > (iii)…
> >
> > (iv) the applicant satisfies the entry clearance officer by relevant information and evidence provided with the application (including their valid passport or valid national identity card as an EEA citizen, which is the original document and not a copy) meets sub-paragraph (a)(i) of the definition of ‘relevant EEA citizen’ (where, in respect of the application under consideration, the date of application by the relevant EEA citizen or their family member is on or after 1 July 2021) in Annex 1 to Appendix EU to these Rules, such that the applicant is a ‘family member of a relevant EEA citizen’ (as defined in Annex 1 to Appendix EU);
>
> Or (b) …

10. As can be seen, this definition has several sub-definitions and the one with which we are concerned in this case is the one set out in (a)(iv) which is whether the applicant satisfies the Entry Clearance Officer by relevant information and evidence provided with the application that the relevant EEA citizen (here, Mr Sarfo) meets definition of “relevant EEA citizen” in subparagraph (a)(i) within Appendix EU to which we turn next.

11. Again, the definition is subdivided, but in brief “relevant EEA Citizen” is defined as an EEA citizen, which Mr Sarfo is, resident in the UK and Islands for a continuous qualifying period, which he was, which began before the specified date, that is 31 December 2020.

12. Pausing there to look at the facts of this case we consider first that the judge did not properly apply the law to which we have already referred. Second, the issue of status under EUSS is not as straightforward as the judge appeared to think. We are satisfied in this case that the judge did err, as we have already indicated, in making reference to the wrong

provisions of law and for that reason the decision involved the making of an error of law and we set it aside.

13. With agreement of the parties, we have proceeded to re-make the decision in light of the law to which we have already referred. The first point we would make is that it is accepted that the appellants fall within the definition of "family members of a relevant EEA national" because they are the children of the spouse of an EEA national. We are satisfied that Mr Sarfo is a "relevant EEA national" because he falls within the definition set out in Appendix EU to which we have already referred, which does not require somebody to have been granted status, it is sufficient that they have made an application for that status within time. That to our mind makes sense, clearly the purpose behind the Rules is to preserve the rights of EEA nationals as they were broadly speaking at the specified date, 31 December 2020.

14. Accordingly for these reasons we are satisfied that the appellants met the eligibility criteria under Appendix EU-FP. Given that the suitability requirements and the requirement for a valid application to be met are also met we are satisfied that the appellants met the requirements of Appendix EU-FP and we therefore allow the appeal on that basis as the ground set out in reg. 8 (3) of the Citizens Rights Regulations

15. Given that we have allowed the appeal on that basis it is unnecessary for us to consider the alternative ground of appeal, which is whether the decision to refuse entry clearance was in breach of the withdrawal agreement.

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.

(2) We remake the appeal by allowing it under the Citizens Rights Regulations.

Signed

Jeremy K H Rintoul
Judge of the Upper Tribunal

Date:

7th February 2024