



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001844

First-tier Tribunal No: EU/56095/2023
LE/01165/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 December 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EYSHILA FERNANDES REIS DE SOUZA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Rushforth, a Senior Home Office Presenting Officer.

For the Respondent: No appearance.

Heard at Cardiff Civil Justice Centre on 18 December 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Khan ('the Judge'), promulgated on 5 April 2024, in which the Judge allowed the appeal against the refusal of the application for leave under Appendix EU (Family Permit) of the Immigration Rules.
2. The above respondent is a citizen of Brazil born on 17 March 2009.
3. There was no appearance by the above respondent. I am satisfied there has been lawful service, to the address specified for the service of documents, of a notice containing details of the date, time, and venue of this hearing. There has been no application for an adjournment which has been granted, or any explanation for the appellant's absence. I am satisfied in all the circumstances, including the only available outcome, that it is in the interests of justice to proceed with the appeal in the above respondent's absence.
4. The Judge records an application being made by the above respondent to join a 'relevant sponsor' although the Secretary of State did not accept in the refusal

letter that the proposed sponsor was a 'relevant sponsor' for the purposes of the Immigration Rules, as they themselves joined as a family member of a 'relevant sponsor'.

5. The Judge accepted the appellant was 15 years of age and the daughter of the sponsor referred to within her application, that both her parents and siblings already legally reside in the UK, and that she is present in the UK [11].
6. At [12] the Judge finds the above respondent is not a joining a 'relevant sponsor' and so cannot succeed under Appendix EU.
7. The Judge, however, goes on to consider section 55 Borders, Citizenship and Immigration Act 2009 which is found is to be of some relevance in the appeal on the facts [13].
8. At [14] the Judge writes:
 14. The Sponsor cited by the Appellant is her parent and I find that in view of section 55 of the Borders, Citizenship, and Immigration Act 2009, and the fact that both her parents and siblings legally reside in the UK, this appeal ought to be allowed.
9. The Secretary of State sought permission to appeal on the basis the Judge had made a material misdirection of law in exceeding the Tribunal's statutory jurisdiction in holding that section 55 of the 2009 Act was potentially determinative of the case where the relevant rules were not met and the Withdrawal Agreement was not engaged. It is also submitted it is not apparent why the Judge considered at [5 (b)] that this was an issue in dispute as it was not the position taken by either party.
10. The Grounds assert that as an appeal under the Citizens' Rights Appeals Regulations 2020 the only statutory ground was that the decision was contrary to the relevant rules or that it breached rights under the Withdrawal Agreement. The Judge did not find it breached the Rules and there is no finding it breached the Withdrawal Agreement. The grounds assert section 55 had no application on the facts or in law and, in any event, the Judge's reasons as to its applicability are said to amount to little more than the above respondent's age.
11. Permission to appeal was granted by another judge of the First-tier Tribunal 26 April 2024, the operative part of the grant being in the following terms:
 2. The grounds assert that the Judge erred in law by failing to apply the requirements of Appendix EU (Family Permit) and allowing the appeal under s.55 of the Borders, Citizenship and Immigration Act 2009.
 3. There is no Article 8 appeal and there is an arguable error of law.

Discussion and reasons

12. It is important for judges in the Immigration and Asylum Tribunal's to remember that they are judges and not social workers. There may be many occasions when the facts of a particular appeal may lead them to want to make a decisions that they feel is right in all the circumstances, but they are not permitted to go off on a 'frolic of their own' and must ensure that any decision that they make deals with the proper factual issues requiring determination and applies correct relevant legal principles, with a view to providing a legally sustainable decision.
13. I accept the Judge may not have been assisted as it appears the appeal was determined without a hearing, on the papers, but the Judge was well aware of the background which is clearly set out in the documents to which reference is made at [3] of the decision under challenge.

14. Proceedings before the First-tier Tribunals are issue-based. It is necessary as part of the required procedure for the parties to agree issues in dispute requiring determination if at all possible. At [5] the Judge sets out what are considered to be the issues in dispute but there appears some doubt as to whether that recorded at [5(b)] was an agreed issue. It does not appear that it ever was.
15. The Secretary of State's decision dated 14 October 2023 refused the application as the above respondent had not provided any evidence to show that the proposed sponsor could satisfy the definition of a 'relevant sponsor', for although that person had been granted status under the EU Settlement Scheme they had been granted it as a non-EEA national citizen and therefore could not act as a 'relevant sponsor' for the purposes of the application. This application was not refused on human rights grounds or by reference to section 55. This is clearly not an issue that the parties believed was at large or which required determining by the Judge.
16. The Judge was correct to find the above respondent could not succeed under the Immigration Rules and should have dismissed the appeal at that point.
17. If the above respondent believes they have a valid claim pursuant to Article 8 ECHR it is always open for them to make a fresh application on that basis, which can be considered on its merits. In relation to the application made and refused by the Secretary of State, it has not been made out that the refusal is in any way wrong.
18. I find that the Judge has erred in law in a manner material to the decision to allow the appeal for the reasons set out in the application for permission to appeal and grant of permission to appeal. I set the decision of the Judge aside but preserve the finding that the above respondent cannot succeed under Appendix EU of the Immigration Rules.
19. On the basis of the preserved findings, I substitute a decision to dismiss the appeal.

Notice of Decision

20. The First-tier Tribunal materially erred in law. I set the decision aside.
21. I substitute a decision to dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 December 2024