



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001992

First-tier Tribunal No: EA/13203/2021

THE IMMIGRATION ACTS

Decision and Reasons issued:

On 9th July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AKTHER SATHE MOLLA
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. Richardson, Counsel instructed by Lawmatic Solicitors
For the Respondent: Mr. S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 27 June 2024

1. This is an appeal by the appellant against a decision of First-tier Tribunal Moon (the "Judge"), dated 12 March 2024, in which she dismissed the appellant's appeal against the respondent's decision to refuse her application under the EUSS. The appellant is a national of Bangladesh who applied as the family member of a relevant EEA citizen. She applied on the basis that she was dependent on her father, the sponsor, a national of Italy.
2. Permission to appeal was granted by First-tier Tribunal Judge Hollings-Tennant in a decision dated 3 May 2024 as follows:

"2. Ground [1] asserts that the Judge erred in law by failing to properly apply the eligibility criteria in Appendix EU. There is some merit in this assertion. Whilst the Judge refers to the definition of a 'child' in Annex 1, it is not clear whether she turned her mind to the question as to whether the Appellant falls within the scope of sub paragraph b(ii)(cc) of that definition after finding that she was dependent on her father at the date of application. It is at least arguable that the Sponsor falls

within the definition of 'relevant sponsor' in Annex 1 as the grounds contend, though the somewhat complex and convoluted definitions for 'relevant Sponsor', and 'joining family member' give rise to a degree of ambiguity.

3. Ground [2] asserts that the Judge erred in finding the evidence relating to the Appellant's husband was contradictory. However, the Judge was entitled to find there were inconsistencies in evidence and gave adequate reasons for so finding. I note in oral evidence the Appellant said she was engaged whereas in her witness statement she refers to her spouse and says their marriage was registered in March 2020, as the Judge alludes to (at paragraphs [18] and [20]).

4. In the circumstances, I consider that the grounds have identified what is at least an arguable error of law regarding the eligibility criteria. Permission to appeal is granted on ground [1] but refused on ground [2]."

3. There was no Rule 24 response.

The hearing

4. I attended remotely due to rail problems. Mr. Walker and Mr. Richardson were present at Field House. There was no objection to me attending remotely. I heard submissions from both representatives. I reserved my decision.

Error of law

5. The grounds submit that the Judge erred in requiring the appellant to show that she was dependent on the sponsor at the "specified date" rather than the date of application.

"In order to satisfy the requirements of EU11. of Appendix EU, the appellant must demonstrate that she is a family member of a relevant EEA citizen. The term "family member of a relevant EEA citizen" is defined in Annex 1 and includes a "child", the definition of which includes a direct descendent aged 21 years or over of a relevant EEA citizen and who was dependant on the relevant EEA citizen at the specified date (b)(ii)(aa)."

6. At [26] she finds:

"Whilst I find that the appellant has been dependant on her sponsor since arriving in the United Kingdom, the appellant has not provided sufficient evidence to establish dependency on the sponsor at the specified date and so she has not established that she meets the requirements of Appendix EU."

7. It was submitted that the appellant needed to show dependency at the date of application, not at the specified date with reference to the definitions as set out in Annex 1 to Appendix EU. At the hearing, with reference to the grounds, Mr. Richardson went through the definitions. He submitted that the appellant would be a "joining family member of a relevant sponsor". Under (d) of this definition she was a "child", and under the second (a) of this definition she was not resident in the United Kingdom at any time before the specified date.
8. It is not in dispute that the appellant is the direct descendant aged 21 years or over of a "relevant sponsor", so as to meet the first part of the definition of "child". What she needs to show is that she is "dependent on" the sponsor at the relevant date. It was submitted that the appellant met (b)(ii)(cc) of the definition of "child". (b)(ii)(cc) provides that the appellant must have been dependent "on the relevant sponsor (or on their spouse or civil partner) at the date of

application". It was submitted that the Judge had erred in finding that the relevant date was the specified date, which applies to (b)(ii)(aa) and (b)(ii)(bb).

9. The next relevant definition is that of "relevant sponsor" as referred to in (b)(ii)(cc). It was submitted that the sponsor met this definition. Under (b) of this definition, the appellant applied "on or after 1 July 2021". This is not in dispute. Under (b)(i)(bb) the sponsor is an EEA citizen who has been granted limited leave to enter or remain under paragraph EU3. It is not in dispute that the sponsor has been granted limited leave.
10. Paragraph [11] of the grounds of appeal submits therefore that the appellant is "the direct descendant aged 21 years or over of a relevant sponsor, and dependent on the relevant sponsor at the date of application." Therefore, she was not required to show dependency on the sponsor at the specified date, but would meet the requirements if she could show that she was "dependent on the relevant sponsor at the date of application".
11. At the hearing, following Mr. Richardson's submissions, Mr. Walker agreed that the appellant had been required to show dependency at the date of application, not the specified date. He accepted that the appellant could fall under the definition of child in (b)(ii)(cc).
12. I am in agreement with the respondent's concession that the appellant was required to show that she was dependent on the sponsor as at the date of application in accordance with the definitions as set out above. I find that the Judge made an error of law when finding that the appellant had to show dependency as at the specified date rather than at the date of application.
13. I note that the decision states at [7] that:

"At the beginning of the hearing it was agreed that the two issues in the appeal are as follows:

 - (i) Whether the appellant was dependant on the sponsor on the specified date and if so,
 - (ii) Whether any dependency continues."
14. First, that the respondent was not represented at the hearing, so this cannot have been an agreement between the parties, but only between the appellant's representative and the Judge. Secondly, even this concession on behalf of the appellant was wrong, that does not mean that the Judge did not err by failing to apply the correct law.
15. Although Mr. Walker accepted that the Judge should have considered whether the appellant had shown dependency as at the date of application, he submitted that the respondent's position was that the appellant had not demonstrated this.
16. Mr. Richardson submitted that the finding at [26] of the decision was unequivocal, and unchallenged.
17. I have considered [26]. The Judge found at [26] that "the appellant has been dependant on her sponsor since arriving in the United Kingdom". There was no cross-appeal by the respondent against this finding. I find that the appellant entered the United Kingdom on 8 February 2023 (see page 229 of the Upper Tribunal bundle). The application was made on 9 February 2023, (page 217 of

the Upper Tribunal bundle). Mr. Walker did not dispute either of these dates. Therefore the finding that the appellant had been dependent on the sponsor since she entered the United Kingdom is a finding that she was dependent as at the date of application.

18. I find therefore that the error of law is material as the Judge had found that the appellant was dependent on the sponsor as at the date of application, which is when the appellant needed to show dependency in order to meet the requirements of the EUSS. Accordingly I set the decision aside.

Remaking

19. The respondent is in agreement that, in accordance with the definitions in Annex 1 to Appendix EU, the appellant needed to show dependency on the sponsor as at the date of application. The Judge found that the appellant was dependent as at this date, which finding was unchallenged. I find that the appellant was dependent on the sponsor at the relevant date, and has therefore shown that she meets the requirements of Appendix EU as the joining family member of the sponsor.

Notice of Decision

20. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
21. I remake the decision allowing the appellant's appeal.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 July 2024