



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006205
First-tier Tribunal No: EA/12268/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 April 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

HAXHI TERZIU
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Kogulathas, instructed by Suleman Legal Services
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 24 March 2023

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 16 August 1956. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EU Settlement Scheme (EUSS) Family Permit as the family member of a relevant EEA citizen under Appendix EU (Family Permit) to the Immigration Rules.
2. The appellant and his wife, Flora Terziu, both applied for EUSS Family Permits as dependent parents, to join their son, Vilson Terziu and his wife Karolina Terziu, a Polish national living in the UK with pre-settled status. Both applications were refused.
3. In the case of Flora Terziu, the refusal decision was made on 22 July 2021 and was based upon the fact that the respondent was not satisfied that it had been shown that she was related to her son as claimed. Ms Terziu appealed against the decision and, in a decision promulgated on 25 August 2022, the First-tier Tribunal concluded that she was related to her son Vilson Terziu as claimed and allowed her appeal.

4. The Applicant's application was refused on 19 July 2021, on the grounds that he had not provided adequate evidence to prove that he was a 'family member' of a relevant EEA citizen or of their spouse and that he did not, therefore, meet the eligibility requirements of Appendix EU (Family Permit) to the Immigration Rules. The Applicant appealed against that decision. His appeal was dismissed by the First-tier Tribunal on 8 November 2021, on the papers, on the basis that, whilst it was accepted that he was the father of Vislon Terziu, there was a lack of evidence of dependency upon his son and daughter-in-law. That decision was, however, subsequently set aside owing to a procedural irregularity in relation to the submission of documentary evidence.

5. The appeal was re-heard in the First-tier Tribunal, by Judge Mathews, again as a paper case. It was argued by the appellant that dependency had not been raised by the respondent in the decision and was not a component of the applicable rules and in any event could be assumed from the fact that he had previously been granted a visitor visa to visit his son and daughter-in-law. Judge Mathews accepted that the relationship between the appellant and the sponsor was established. He found, however, that dependency upon the sponsor was a required element of the rules for someone in the appellant's position, that there was no satisfactory evidence of dependency and that the requirements of the regulations had not been met. He therefore dismissed the appeal, in a decision promulgated on 24 October 2022.

6. The appellant then sought permission to appeal to the Upper Tribunal on the grounds that the judge had erred in law as dependency was assumed since the appellant's wife's application had been granted following a successful appeal.

7. Permission was granted in the First-tier Tribunal on the basis that the judge had arguably erred in law if it was the case that the appellant's wife's grant of entry clearance had been before the judge.

8. In a rule 24 response, the respondent opposed the appellant's appeal on the basis that there was no material error of law in the absence of any indication that the decision to grant entry clearance to the appellant's spouse was ever submitted to the First-tier Tribunal, and since his application had been made after the specified date.

9. The appellant then filed a skeleton argument, together with a rule 15(2A) notice in which he applied to adduce an email sent by his solicitors to the First-tier Tribunal and the respondent prior to the hearing before Judge Mathews attaching the decision in his wife's appeal and confirming that she was due to hand her passport in to the visa application centre (VAC) to be endorsed with a visa. It was argued that Judge Mathews ought to have considered that the appellant's wife's appeal had been allowed and that the appellant's appeal ought to have been determined consistently with that of his wife.

10. The matter then came before us.

11. Ms Kogulathas relied upon her skeleton argument and submitted that the judge's decision was wrong, since dependency should be assumed because the appellant had made his application before 1 July 2021, as required in Appendix EU (Family Permit), and because his wife had been granted entry clearance as the dependant parent of their son. She confirmed that an email had been sent to the Tribunal on 20 September 2022, prior to the hearing before Judge Mathews, confirming that the appellant's wife's appeal had been allowed and that she had been invited to go to the visa application centre to receive her visa. She submitted that that should have been considered as though she had been granted a family permit and the appellant's appeal should have

been allowed on that basis. The appellant therefore met the requirements of Appendix EU (Family Permit) as a dependent parent.

12. Mr Wain accepted that dependency should be assumed because the application was made by the appellant before 1 July 2021 and that the appellant met the definition of a dependent parent in Annex 1 of Appendix EU (Family Permit). He confirmed that the appellant's grounds were not opposed and he agreed that the judge's decision should be set aside and the decision re-made by allowing the appeal.

13. In light of that concession made on behalf of the respondent we accept that Judge Mathews' decision must be set aside and the decision re-made by allowing the appeal on the basis that the appellant was able to meet the relevant requirements in Appendix EU (Family Permit) as a dependent parent.

Notice of Decision

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. First-tier Tribunal Judge Mathews' decision is set aside. We re-make the decision by allowing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 March 2023