



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001369

First-tier Tribunal No: EU/53912/2023
LE/00955/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13 August 2024**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**OSAMUDIAME WISDOME UGOWE
(NO ANONYMITY ORDER MADE)**

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Ajalo, a Legal Representative from Legal Matters Firm Ltd.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 2 August 2024

DECISION AND REASONS

1. The Appellant, a citizen of Nigeria born on 7 May 2006, appeals with permission a decision of First-tier Tribunal Judge Suffield-Thompson ('the Judge') who dismissed his appeal against the refusal of his application for an EU Family permit made on 12 April 2023.
2. The basis of the refusal was that the Entry Clearance Officer ('ECO') was not satisfied the Appellant had demonstrated he was a family member of his EU national sponsor, as set out in Appendix EU (Family Permit) of the Immigration Rules.
3. The Judge considers the relationship issue from [13] referring to both documentary and oral evidence. The Appellant wished to join his father and stepmother in the United Kingdom. The stepmother is a German national.
4. Concern was raised by the ECO in relation to birth certificates that had been provided. Having considered the evidence, the Judge writes at [18] - [19]:

18. The Appellant on receipt of the RL has now sought and obtained an official Authentication of the birth certificate from the Federal Ministry of Foreign and Inter-government Affairs. I had nothing to suggest that this document was not genuine and I accept it as useful proof in this appeal.
19. Finally, I had before me the marriage certificate of the Appellant's father and stepmother, so I do accept on the evidence before me that the Appellant is related to the EEA Sponsor.
5. Rather than allow the appeal at that stage the Judge stated it was necessary for the Appellant to establish he is a "dependent" family member of the EU national [20].
6. The Judge considers this issue between [21] - [25] leading to the conclusion there was insufficient evidence to find the Appellant is a "dependent" family member of the Sponsor and, as a result, dismissing the appeal.
7. The Appellant sought permission to appeal to the Upper Tribunal on the basis the Judge had considered an irrelevant matter, i.e. dependency, misinterpreted the rules under Appendix EU (Family Permit) in stating that the Appellant also needed to demonstrate evidence of dependency to be granted a family permit to join his sponsor, and in failing to consider that the Appellant is under the age of 21 and as such he is not required to show evidence of dependency according to Appendix EU (Family Permit).
8. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis it was arguable the Judge erred in law in finding the Appellant, who at the time was a child aged 17, had to establish dependency upon the relevant EEA national or their spouse.
9. In a Rule 24 reply dated 19 April 2024 the ECO's representative writes:
 2. The respondent has noted the appellant's grounds of appeal and accepts the Judge has materially erred in his assessment. It is accepted that there is no requirement for dependency for the appellant under the definition of a "family member of a relevant EEA citizen" under Annex A of Appendix EU FP given the fact that he is only 17 years of age.
 3. The respondent accepts that the decision should be set aside and the appeal allowed.

Discussion and analysis

10. In light of the concession by the ECO, the grounds on which permission to appeal was sought and the grant permission to appeal, and taking into account the Appellant's age and factual matrix as found, a correct application of the Rules shows it is not necessary for the Appellant to have proved dependency.

Notice of Decision

11. The Judge has been shown to have erred in law in a manner material to the decision to dismiss the appeal.
12. I set aside the decision of the First-tier Tribunal.
13. I substitute a decision to allow the appeal on the basis of the findings made by the Judge and the concession by the ECO.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 August 2024