



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-003676

First-tier Tribunal No: EA/00773/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**AN ENTRY CLEARANCE OFFICER**

Appellant

**and**

**CHRISTABEL OGHOGHO EHIZEMEN**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Gazge, a Senior Home Office Presenting Officer.

For the Respondent: Sponsor and Mother in person (assisted by a McKenzie Friend).

**Heard at Birmingham Civil Justice Centre on 5 April 2023**

**DECISION AND REASONS**

1. The Entry Clearance Officer ('ECO') appeals with permission the decision of First-tier Tribunal Judge McMahon ('the Judge'), promulgated on 5 July 2022 following consideration of the merits of the appeal on the papers.
2. The Judge notes the above respondent ('Christabel') is a citizen of Nigeria born on 25<sup>th</sup> December 2002 who appealed a decision of the ECO dated 20 November 2021 which refusing her application for a family permit under the European Union Settlement Scheme (EUSS).
3. Christabel made the application on 18 June 2021 on the basis she is the stepdaughter of Mr Edward Ehonwa (the Sponsor), who she claimed was a relevant EEA citizen.
4. The Judge sets out findings of fact from [18] of the decision under challenge. The Judge finds at [25] that Christabel is the daughter of Esther Omonuwa Aibangbee ('the Mother'), that she is under the age of 21, and that the Mother is married to the Sponsor as a result of a proxy marriage on their behalf conducted on 28 November 2021, a week after the issue of the refusal letter.
5. The Judge considers the application of the fact as found to the law from [27] writing:

27. To qualify for a EUSS Family Permit, the Appellant must be able to demonstrate that she is a “family member of a relevant EEA citizen”, as defined by the Appendix. I have extracted the relevant definitions and these can be found at paragraphs 9-14, above.
  28. The Appellant puts her case on the basis that her Sponsor is her “step-father” and a “relevant EEA citizen”. Therefore, the Appellant must show that her mother and the Sponsor are either in a marriage or civil partnership which is recognised under the law of the UK, and that marriage or civil partnership is not one of convenience.
  29. In this case, I have found that the Appellant’s mother and the Sponsor have entered into a marriage in Nigeria. According to Awuku, that is a valid marriage for the purpose of the law of England and Wales. Consequently, the Appellant has discharged the burden of proof imposed on her to demonstrate that the marriage is valid.
  30. Having regard to Rosa, it is for the Respondent to prove that an otherwise valid marriage is a marriage of convenience. In this case, I have received no evidence or submissions from the Respondent which enable me to cast doubt on the validity of the marriage between the Appellant’s mother and her Sponsor.
  31. Taking all the above into account, I am satisfied that the Appellant is a “family member of a relevant EEA citizen” for the purposes of the Appendix. She is under the age of 21 years old and therefore needs to prove that she is a child of a relevant EEA citizen or his or her spouse or civil partner. The Appellant has demonstrated that to the required standard by virtue of the DNA certificate proving her relationship to her mother, and the proxy marriage certificate proving the marriage between her mother and the Sponsor, a relevant EEA citizen.
  32. As such, the appeal is allowed.
6. The ECO sought permission to appeal referring to the Judge’s finding that the Mother and EEA national Sponsor did not marry until 28 November 2021. The grounds state the Mother was resident in the UK as a durable partner of the Sponsor before the specified date of 31 December 2020, at which point the Mother and Sponsor were not married, and therefore Christabel could not be the EEA Sponsor’s stepchild. Specific references are made to Annex 1 of Appendix EU which requires the familial relationship to exist before the specified date.
  7. Permission to appeal was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
    2. It is argued in the grounds that the judge misapplied the legal framework of Appendix EU (Family Permit) in finding that the appellant could be treated as a child of her mother’s EEA sponsor husband. The point is made that the rules clearly specify that the relationship must exist before the specified date and, here, the marriage occurred almost a year after this point in time. Simply put, it is contended that the appellant was not the child of the EEA citizen on the specified date because he had not, by that time, married her mother to become her step-father. It is arguable that the determination discloses an arguable and material error of law.

## Discussion

8. The specified date following the UK leaving the European Union, set out in the Withdrawal Agreement and Appendix EU is 31 December 2020. The fact the Mother and Sponsor were in a durable relationship at the specified date was noted by the Judge, and is not disputed, but that means there were not legally married. That is factually correct and has not been shown to be otherwise on the evidence.

9. A stepchild is a child of a person who is not the child's biological parent but who is married to a biological parent. In this appeal the Mother is Christabel's natural mother the Sponsor is not her natural father.

10. The ECO's refusal challenged Christabel's claim to be a family member writing:

You have stated that the family relationship of the EEA citizen sponsor to yourself is child under 21. As evidence of this relationship you have provided a birth certificate and DNA report.

It is noted that your parent, has been issued status on the basis they are an unmarried partner of your relevant EEA citizen. For you to be considered as 'family member' as defined in Appendix EU (family permit) of the Immigration rules you would need to be either the child of the relevant EEA citizen or their spouse or civil partner. You have not provided a marriage certificate to evidence that the status between your parent and your EEA sponsor has changed and that your parent is now the spouse of a relevant EEA citizen.

On that basis I am not satisfied you are the 'family member' of a relevant EEA citizen. You do not meet the eligibility requirements of Appendix EU (family permit) and your application is therefore refused.

11. At the date of the application, 18 June 2021, the Mother and Sponsor were not married. Indeed the Proxy marriage between them only occurred after the refusal was received, no doubt to try and resolve the deficiency identified in the application by the ECO.

12. The Judge at [11] referred to Appendix 1 of Appendix EU and writes:

*"Family member of a relevant EEA citizen" is defined, so far as is relevant for the purposes of this appeal, by Annex 1 to the Appendix as-*

*"a person who has satisfied the entry clearance officer, including by the required evidence of family relationship, that they are: ... (d) the child or dependent parent of a relevant EEA citizen, and the family relationship: (i) existed before the specified date (unless, in the case of a child, the person was born after that date, was adopted after that date in accordance with a relevant adoption decision or after that date became a child within the meaning of that entry in this table on the basis of one of subparagraphs (a)(iii) to (a)(xi) of that entry); and (ii) continues to exist at the date of application;..."*

*..."*

13. Where the Judge appears to have gone wrong is in the application of law to the facts. The Judge recorded that the Mother and Sponsor had entered into the marriage in Nigeria and that it was a valid marriage. It is not clear why the Judge went down that road when there is no indication that the validity of the marriage was in dispute. Indeed when the ECO made the decision refusing the application there was no marriage, as that occurred later. There is no indication the ECO before the Judge took this as an issue in any event.

14. I have set out the Judge's finding at [31] above. What is missing from the Judge's analysis is any reference to the specific terms of Appendix 1 of Appendix EU, namely that the familial relationship had to exist before the specified date. Even if under the terms of European law as it applied before Brexit and the Withdrawal Agreement Christabel could have succeeded, European law no longer applies unless specifically preserved by the terms of the Withdrawal Agreement. It was not made out before me that European law relevant to the issues in this appeal was preserved or remains applicable.

15. I find the ECO has established that the Judge has erred in law for the reasons set out in the application for permission to appeal and the grant of permission to appeal. The Judge omitted to consider the material aspect of the relevant legal provisions, namely whether the familial relationship existed before the specified date. I set the decision aside.

16. As on the basis of the Judge's own findings, in relation to which there is no further evidence, the Mother and Sponsor were not married until after the specified date, Christabel was not the stepdaughter of EEA national Sponsor before the specified date, in law.

17. I therefore substitute a decision to dismiss the appeal.

18. If the Mother wishes for her daughter to be able to join her in the UK consideration should be given to the Immigration Rules or Article 8 ECHR, upon which they may wish to take appropriate legal advice.

### **Notice of Decision**

19. The First-tier Tribunal Judge erred in law in a manner material to the decision to allow the appeal. The determination is set aside.

20. I substitute a decision to dismiss the appeal.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 April 2023**