



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002947

First-tier Tribunal No: EA/00285/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

20th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

RAJINDER SINGH
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L. Singh, Legal Representative

For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 3 October 2023

DECISION AND REASONS

1. The appeal before me is that of the Secretary of State. However, for the purposes of this decision, I shall hereinafter refer to the Secretary of State as the Respondent and Mr Singh as the Appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
2. The Appellant appeals with permission a decision of First-tier Tribunal Judge Wyman ('the Judge'), promulgated on 5 May 2023, in which the Judge allowed the Appellant's appeal against the refusal of an Entry Clearance Officer (ECO) to grant him a Family Permit under Appendix EU (Family Permit) to the Immigration Rules to enable him to join his son, Mr Singh, and his daughter-in-law, Ms Iwona Katarzynska, a Polish national, who is in a durable relationship with Mr Singh.
3. The Judge states at [6] that the application was refused because the Appellant had "not provided adequate evidence to prove that he was a "family member' of a relevant EEA citizen, or of their spouse or civil partner. This includes a spouse, child, dependent parent or other relation". He states at [13] that "The eligibility requirements regarding who is a family member of a relevant EEA

citizen has now changed, and it is acknowledged that the definition as to who is a family member has become tighter under the new regulations. These are generally now considered to be only a spouse, a civil partner or the durable partner of an EEA citizen, a child or grandchild under 21 of an EEA citizen, or a dependent parent (or grandparent) of a relevant EEA citizen or their spouse or civil partner". Having reviewed the evidence, he set out his findings from [12], and concluded:

"17. Taking all this documentary evidence into consideration, I accept that Mr Singh is in a durable partnership with Ms Katarzynska (as the couple are not married).

18. The appellant is the father of Mr Singh as confirmed by the birth certificate and passport. He therefore is the dependent parent of a relevant EEA Citizen or of their spouse or civil partner. "

4. On the basis of his findings at [17 - 18], the Judge allowed the appeal.
5. Permission to appeal was sought by the Respondent on the basis that the decision contained an error of law in that the Judge had "failed to have regard to the fact that the term "civil partner" is one of art and is the subject of express definition in Annex 1 of Appendix EU (Family permit). Sukhwinder Singh Rattan and Iwona Katarzynska are not civil partners but are at best durable unmarried ones, and thus the appellant's relationship to Ms Katarzynska is not direct descendant of her or of her spouse or civil partner as the rules require."
6. Permission to appeal was granted by First-tier Tribunal Judge Elliot, on the basis that as the definition of civil partner in Appendix EU (Family Permit) does not include durable partners, it is arguable that the Judge made a material error of law.
7. There was no Rule 24 response before me but the Appellant opposes the appeal.
8. I note that an application was made to the Upper Tribunal on 27 September 2023 for an adjournment on the basis that instructed counsel was not available for the hearing. It was refused because there was sufficient time for the case to be assigned to new Counsel without prejudicing the Appellant. The decision-maker took into account the Upper Tribunal's listing resources, and the waiting times for a new date. This application was not renewed before me.

Discussion and analysis

9. There was no dispute before me that the law was accurately stated by the Judge at [13]. For completeness, I set out the relevant provisions of Appendix EU (Family Permit) below:
10. Paragraph FP3 states that: the applicant will be granted entry clearance under Appendix EU (Family Permit), valid for the relevant period, by an entry clearance officer where:
 - i. A valid application has been made in accordance with paragraph FP4;
 - ii. The applicant meets the eligibility requirements in paragraph FP6(1), (2) or

iii. The application is not to be refused on the grounds of suitability in accordance with paragraph FP7.

11. Paragraph FP6.(1) of Appendix EU (Family Permit) states that the following requirements must be met at the date of application for entry clearance to be granted in the form of an EU Settlement Scheme Family Permit:

“FP6. (1) The applicant meets the eligibility requirements for an entry clearance to be granted under this Appendix in the form of an EU Settlement Scheme Family Permit, where the entry clearance officer is satisfied that at the date of application:

(a) The applicant is a specified EEA citizen or a non-EEA citizen;

*(b) The **applicant is a family member of a relevant EEA citizen**;*

(c) The relevant EEA citizen is resident in the UK or will be travelling to the UK with the applicant within six months of the date of application;

(d) The applicant will be accompanying the relevant EEA citizen to the UK (or joining them in the UK) within six months of the date of application; and

(e) The applicant (“A”) is not the spouse, civil partner or durable partner of a relevant EEA citizen (“B”) where a spouse, civil partner or durable partner of A or B has been granted an entry clearance under this Appendix, holds a valid EEA family permit issued under regulation 12 of the EEA Regulations or has been granted leave to enter or remain in the UK in that capacity under or outside the Immigration Rules.”

12. A “family member of a relevant EEA citizen” family member is defined within Annex 1- Definitions of Appendix EU (Family Permit), and includes the “the child or dependent parent of the spouse or civil partner of a relevant EEA citizen...”, but does not include the dependent parent of a durable partner of a relevant EEA citizen.

13. “Civil partner” is defined in Appendix EU (Family Permit) Annex 1 - Definitions:

“(a) the person is in a valid civil partnership (which exists under or by virtue of the Civil Partnership Act 2004 or under any equivalent legislation in the Islands); or is in a relationship registered overseas which is entitled to be treated as a civil partnership under that Act or under any equivalent legislation in the Islands, with a relevant EEA citizen (or, as the case may be, with a qualifying British citizen); and

(b) it is not a civil partnership of convenience; and

(c) neither party has another civil partner, a spouse or a durable partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person’s relationship with that party .”

14. At the hearing, Mr Lawson relied on the grounds of application on which permission to appeal was granted. Mr Singh submitted that the Appellant and the Sponsor were in a long-term durable relationship, that they had been in that relationship for 13 years both pre and post the date of the Withdrawal

Agreement. However, the dependent parent of the durable partner of a relevant EEA citizen is not covered in the definition of set out at [12 - 13] above. I asked Mr Singh if he was going to make any submissions to establish that the law, as set out in the application for permission to appeal, was incorrect, or if there were any other submissions on which he relied to establish that the parent of a durable partner of a relevant EEA citizen is entitled to a grant of entry clearance by way of a Family Permit. He stated that he was not and he made no further submissions. Mr Lawson, in reply stated that the Judge had clearly stated at [17] that Mr Singh was in a durable relationship with the Sponsor, but then found at [18] that the Appellant was the son of Mr Singh, and that he was “the dependent parent of a relevant EEA Citizen or of their spouse or civil partner.”

15. On the basis of the grounds of application, and the submissions before me today, I find that the Respondent has established that the Judge materially erred in law by failing to apply the provisions he had identified at [13], when he allowed the appeal at [19] on the basis of his findings at [18]. I therefore set aside his decision.

16. On the facts as set out at [13 - 17] of the Judge’s decision, none of which were disputed before me, the correct application of the of the relevant provisions of Appendix EU (Family Permit) as set out above, can only result in one outcome, which is the dismissal of the Appellant’s appeal. I therefore re-make the decision to dismiss the appeal.

Notice of Decision

17. Material legal error is made out in the decision of the First-tier Tribunal. The decision is set aside. The decision is re-made, dismissing the Appellant’s appeal.

M Robertson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 12 October 2023