



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: UI-2023-003315  
First-tier number: EA/51596/2022

THE IMMIGRATION ACTS

Heard at Field House  
On 6 October 2023

Decision and Reasons Promulgated  
On 31<sup>st</sup> October 2023

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
Appellant

and

Mr FAWAS OLANREWAJU SHOWEMIMO  
(NO ANONYMITY DIRECTION)

Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior Home Office Presenting  
Officer  
For the Respondent: Mr Wasiu Tijani Showemimo, sponsor

DECISION AND REASONS

1. Permission to appeal was granted to Secretary of State by First-tier Tribunal Judge Dempster on 3 July 2023 against the decision to allow the Respondent's appeal made by First-tier Tribunal

Judge Joshi in a decision and reasons promulgated on 24 April 2023. The appeal was determined by the judge on the papers. The Respondent had applied for pre-settled status under Appendix EU (Family Permit) claiming to be the son of the sponsor and stepson of Mrs Dagmar Showemimo ("Mrs Showemimo"), a national of Germany resident in the United Kingdom. The sponsor has applied for pre-settled status but was refused on 10 January 2022 and is pursuing administrative review.

2. The Respondent is a national of Nigeria, born on 26 June 2004. His application for pre-settled status under the EUSS was refused because the Appellant's sponsor is a Nigerian national, meaning that the Appellant could not be "a family member of a relevant EEA citizen". At the review stage the Respondent conceded that in fact Mrs Showemimo was the Appellant's EEA sponsor, but her marriage to the Appellant's father was not accepted as valid and in any event the marriage had taken place after the specified date, i.e., 11.00pm GMT on 31 December 2020.
3. Judge Joshi found that at the date of the Appellant's application in 2022 his father was married to Mrs Showemimo, who was the Appellant's stepmother. It was not in dispute that the Appellant was under 21, so that dependency was presumed. The judge allowed the appeal.
4. Permission to appeal was granted by Judge Dempster because it was considered arguable that the First-tier Tribunal Judge had misdirected herself. The date of the marriage of the Respondent's father and Mrs Showemimo was immaterial, as it was after the specified date. Thus it was arguable that the Appellant did not meet the relevant definition of child as a category of family member of a relevant EEA national in Annex 1 of the Appendix EU (Family Permit) to the Immigration Rules.
5. Ms Isherwood for the Appellant relied on the grounds of appeal submitted and the grant of permission to appeal. Celik (EU exit; marriage; human rights) [2022] UKUT 220 (IAC) and Batool and others (other family members: EU exit) [2022] UKUT 219 (IAC) applied. The date of the Respondent's application was not the date which mattered. The date which mattered was the specified date, i.e., 11pm GMT on 31 December 2020. There had not been a recognised marriage at that point in time, so the Respondent did not meet the definition of "a family member of a relevant EEA citizen". The appeal had therefore to be dismissed.

6. Mr Showemimo, speaking on the Respondent's behalf, said that he and Mrs Showemimo had wanted to marry prior to the specified date but that had been impossible because of the disruption caused by the Covid 19 lockdowns. They had married as soon as they were able. He was still waiting for the outcome of his request for administrative review following the refusal of his own EUSS application.
7. The Tribunal's error of law decision was reserved and now follows. The Tribunal accepts Ms Isherwood's submissions. This is a complex area of law and the judge was trying to deal with the case on the papers without the assistance of a Home Office Presenting Officer. The confusion between the date of the application and the specified date is understandable. Nevertheless, it is plain and undisputed that the date of the marriage relied on by the Respondent was after the specified date. The reason why the marriage took place after the specified date is immaterial, as Celik (above) shows.
8. The relevant definitions from Annex 1 of Appendix EU (Family Permit) to the Immigration Rules which apply are as follows:
  - (a) the direct descendant under the age of 21 years of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner;

child

  - a person who has satisfied the entry clearance officer, including by the required evidence of family relationship, that they are:
    - (a) the spouse or civil partner of a relevant EEA citizen, and:
      - (i)(aa) the marriage was contracted or the civil partnership was formed before the specified date;

family member of a relevant EEA citizen
9. Thus the Respondent does not fall within the definitions. As no further findings of fact were required, the decision was remade. The Tribunal finds that the Respondent is not the family member of a relevant EEA citizen. The Respondent's

relationship as Mrs Showemimo's step son arose after the specified date and so was too late. The appeal is dismissed.

### **DECISION**

The Secretary of State's appeal to the Upper Tribunal is allowed.

There were material errors of law in the First-tier Tribunal's decision and reasons, which is accordingly set aside.

Following a summary rehearing, the original decision was remade. The original appeal is dismissed. There can be no fee award.

Signed *R J Manuell* Dated 12 October 2023

Deputy Upper Tribunal Judge Manuell