IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003653

First-tier Tribunal No: EA/14355/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10 July 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

MR BARDHYL KUQI
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms C Nicholas, Counsel
For the Respondent: Ms S Cunha, Senior Home Officer Presenting Officer

Heard at Field House on 19 December 2023

DECISION AND REASONS

1. The appellant is a citizen of Albania. He appeals with permission against the decision of First-tier Tribunal Judge Sweet ('the Judge') who dismissed his appeal against the respondent's decision refusing him a family permit under the EU Settlement Scheme.

Background

2. The appellant was born on 22 September 1975 and lives in Greece. On 20 April 2021 he applied as a dependent on his children, who are Greek nationals and live in the UK. They came to the UK in December 2020, and live with an Uncle here. At the material time of the application they were both under 18 (they are now both adults). He applied on the basis that he was dependent on them and as such met the requirements of Appendix EU(FP).

3. The application was refused on the basis that he had not provided sufficient evidence to show that he was so dependent. The appeal was heard by the Judge in March 2022. In his decision the Judge dismissed the appeal on the basis that:

11. The written and oral evidence of his children, X and A, is that they have been supporting the appellant since the summer of 2021 and they came to the UK in December 2020. The evidence given was vague, and consisted of a rental payment to their grandmother in December 2021 and certain cash payments made on visits to their father. There were a number of untranslated bank transfers in the appellant's bundle. The appellant did not provide a witness statement, nor was there any written statement from the friends who took cash to the appellant on their visits. The dependency requirements under Appendix EU are that:

(a) having regard to their financial and social conditions, or health, the applicant cannot, or (as the case may be) for the relevant period could not, meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen or of the relevant sponsor) or of their spouse or civil partner; and
(b) such support is, or (as the case may be) was, being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen or by the relevant sponsor) or by their spouse or civil partner; and
(c) there is no need to determine the reasons for that dependence or for the recourse to that support"

4. The appellant appealed, and permission was granted by Upper Tribunal Judge Stephen Smith for the following reasons:

1. It is arguable that the definition of "dependent parent" in Appendix EU (Family Permit) provides that dependency is assumed for applicants in the position of the appellant: see para. (b)(i). That being so, arguably the judge fell into error by seeking to determine the issue of dependency and, in turn, dismissing the appeal on that basis.

2. From the materials before me, it is not clear whether this point was advanced before the First-tier Tribunal. If it is being raised for the first time on appeal, the appellant may wish to address, before the Upper Tribunal, why it was not raised previously and why it is appropriate now to be permitted to rely on what is, essentially, a new point introduced on appeal.

Decision and reasons

5. As became clear at the hearing, the primary case advanced by the appellant now, namely that the Judge materially erred because he failed to appreciate that dependency was assumed, is simply not arguable. This is because the dependent parent rule plainly applies to family members who are over the age of 18 at the date of the application:

(a) the direct relative in the ascending line of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; and
(b) (unless sub-paragraph (c) immediately below applies):

> *(i) dependent on the relevant EEA citizen or on their spouse or civil partner:*
>
> *(aa) (where sub-paragraph (b)(i)(bb) or (b)(i)(cc) below does not apply) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed; or*
>
> *(bb) (where the date of application is after the specified date and where the applicant is not a joining family member) at the specified date, and (unless the relevant EEA citizen was under the age of 18 years at the specified date) that dependency is assumed; or*
>
> *(cc) (where the date of application is after the specified date and where the applicant is a joining family member) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed where the date of application is before 1 July 2021;*

6. The appellant's two children were both under 18 as of March 2021. They were under 18 even when the decision was made by the respondent in September 2021. The assumption in the immigration rules only bites when the sponsor is over 18. In her skeleton argument, but not advanced with any vigour before us given the discussion at the hearing, the appellant suggested that because his son was over 18 at the hearing before the Judge that was something that could bring him within the immigration rules. We reject that proposition as being contrary to the express and clearly drafted provision that "unless the EEA citizen was under the age of 18 at the date of application". Therefore the rules have a time bar within them cutting off the assumed dependency for applicants relying on children under 18 at the point of application. The main thrust of the appeal by the appellants is as such misconceived and has to be dismissed.

7. That leaves the appellants seeking to argue that the Judge materially erred in the reasons outlined above in finding that there was no dependency. In our view that argument is not made out. The Judge's reasoning is clear and simply, the appellant provided no evidence of his own circumstances in Greece to show that any money he receives from the UK is necessary for his essential needs, in whole or in part. Faced with that evidential vacuum, it is entirely unsurprising that the Judge found the test was not made out.

8. We were not taken to any evidence that was before the Judge that causes us to doubt the accuracy of his finding. We were not taken to any evidence that the Judge missed or failed to take into account. Were not taken to any evidence that pointed to the Judge coming to a conclusion he was not entitled to.

9. As a result we find that the Judge did not materially err.

Notice of Decision

The appeal is dismissed.

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 21st December 2023