



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003717

First-tier Tribunal No:
EA/00113/2022

THE IMMIGRATION ACTS

Decision and Reasons Issued:

On 22nd of March 2024

Before
UPPER TRIBUNAL JUDGE RIMINGTON

Between
Hafeez Ur Rehman Khilji
NO ANONYMITY DIRECTION

Appellant

And
Entry Clearance Officer ('ECO')

Respondent

Representation:

For the Appellant: Son of the appellant (attending in person)

For the Respondent: Ms S Rushforth, Home Office Presenting Officer

Heard at Field House on 8 March 2024

DECISION

1. The appellant appealed the decision of First-tier Tribunal ('FtT') Judge Shiner ('the judge') which dismissed the appellant's appeal against the ECO's refusal on 26th November 2021. The appellant's application was refused under Appendix EU (Family Permit) of the

Immigration Rules on the basis that the appellant had not shown he was a family member of the sponsor Ms L Oprescu to whom the appellant's son was said to be married.

2. The ECO's refusal letter did not accept the relationship between the appellant and sponsor or that the sponsor was resident in the UK stating that 'more substantial proof' was required of the sponsor's residency to process the application than the tenancy agreement. The judge had ignored important evidence. The appeal grounds stated that the son's birth certificate, sponsor's bank statements, money transfer receipts and medical bills (proof of the sponsor's residence), and copies of passports and ID cards were attached.
3. The grounds of appeal submitted stated that the judge had made an error of law by ignoring/overlooking the marriage certificate mentioned in the refusal letter and by stating that he, the judge, had no real evidence that the sponsor had obtained pre or settled status in the UK, and the judge had overlooked/ignored the daughter in law's (sponsor's) residence document dated 9th May 2019 submitted with the original application and his son's residence card. The respondent had only produced a 15 page bundle. The appeal grounds noted that the refusal letter had stated more substantial proof was needed.
4. The appeal was listed for mention and directions on 17th January 2024 and directions were issued by me as follows:

'The Tribunal records do not show the documentation now relied upon in the Upper Tribunal was forwarded to the First-tier Tribunal (FtT) for hearing in accordance with directions issued on 28th March 2022 such that any documents on which the appellant wished to rely should be filed by 11th April 2022. Thus there were limited documents before FtT Judge Shiner when the matter was determined on 7th June 2022.

The only documents before the First-tier Tribunal hearing, save for appeal documents and refusal decision, were two Nat West bank statements dated January 2019 and November /December 2021 in the name of L Oprescu, 2 invoices from Purpose Chiropractic, a birth certificate for Asif Hafeez Khilji, the national identify card and passport of the appellant, and the passport of Ms L Oprescu.

DIRECTIONS

- (i) **The appellant is by 5th February 2024 to file and serve on both the Upper Tribunal and the Secretary of State documentary evidence *demonstrating the provision of any further documentation ie marriage certificate over and above that identified above in accordance with the FtT directions of 28th March 2022.***

(ii) *The matter will be relisted for the first available date after 1st February 2024 in Cardiff.*

(iii) ***An Urdu interpreter*** will be requested for the forthcoming error of law hearing.

5. On 6th February 2024 the appellant sent an email to the Upper Tribunal stating, inter alia, the following with regard the marriage certificate

'Unfortunately, it appears there was an oversight in forwarding this document along with the other relevant materials. I deeply regret this error and any inconvenience it may have caused.'

6. At the resumed hearing on 8th March 2024, Ms Rushforth submitted there was missing evidence before the FtT, and the son of the appellant had accepted that the evidence was not provided to the FtT in oversight. There was nothing to prevent the applicant making a new application under the EU scheme with the correct evidence. The actual marriage certificate and further information on the sponsor's residence was not before the judge. There was no evidence of pre-settled or settled status of the sponsor and no evidence the sponsor was even in the UK at the relevant time.

7. It was explained to the appellant's son that documentation was missing, and that the judge had very limited documentation before him. The judge had also stated, notwithstanding the missing marriage certificate that he did not accept that the sponsor was resident in the UK as required by the Immigration Rules. Both the son of the appellant and his relative who assisted with the documentation acknowledged at the hearing in the Upper Tribunal, that there had been information missing from the bundle. Even though the respondent had not filed a bundle, the onus of proof was on the appellant to demonstrate he was a 'family member of a relevant EEA citizen' and thus satisfied the relevant rules, as the judge stated, FP6 and FP8.

8. I explained that the focus is on the lawfulness or otherwise of the FtT decision and merely producing information or evidence after the judge's decision does not demonstrate in this case any error of law.

9. The judge had proceeded to determine the matter on the papers in accordance with the consent of the parties. The judge set out the relevant documentation in front of him as follows:

'The Appellant provided an appeal bundle of 25 pages it contains an appeal application, copy of the Refusal Letter, birth registration certificates in respect of the Appellant and Asif Khilji, Sponsor's bank statement, some domestic invoices, Appellant's identity card and passport, and copy passport of the Sponsor.'

10. The judge found at [22]

'However I have little to no documentary evidence to establish that the Sponsor and Asif Khilji are married or in a durable relationship. Moreover I have no real evidence that the Sponsor has obtained pre or settled status in the UK.'

And at [24]

'Moreover, even if I am wrong about that, he has not established that the Sponsor is an EU citizen within the terms of the Annex 1 Appendix FM (Family Permit) definition. This is because he has failed to show that the Sponsor has pre or settled status.'

11. The material part of Appendix EU (Family Permit) is as follows:

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 not a British 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;

12. The application was made on the 28th June 2021. The judge accepted the tenancy agreement existed, although it was not in the bundle either before the FtT or the Upper Tribunal, but even so, it had been rejected by the ECO who required more substantial proof and clearly the judge did not consider its mere existence indicated the sponsor fulfilled the definition for the purposes of Appendix EU (Family Permit). Despite the directions dated 22nd January 2024, nothing had been produced to the Upper Tribunal to confirm that relevant evidence had been provided to the FtT. The only documentation produced, even in the updated bundle was a residence document which dated from May 2019. That does not appear to have been before the FtT and also predates the application by two years and does not show that the sponsor was even in the UK at the relevant time contrary to FP6. Even if it were, as the judge stated, it does not show that the sponsor had settled or pre-settled status at the date of application.

13. The appellant's relative who attended stated that his mother's application had been granted but this was not stated in either an appeal to the Upper Tribunal or previously to the FtT.

Notice of Decision

14. I conclude that on the evidence before the judge, there was no material error of law and the judge's decision should stand. The appeal remains dismissed.

H,Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

Signed
18th March 2024