IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001215

First-tier Tribunal Nos: EU/53641/2023
LE/02346/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th May 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE METZER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALEKSANDROS DACI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mrs Nwachuku, Senior Home Office Presenting Officer
For the Respondent: Mr P Blackwood instructed by WH Solicitors

Heard at Field House on 9 May 2024

DECISION AND REASONS

1. The appellant, who we will refer to for convenience as the Secretary of State for the Home Department, appeals by grant of permission of a First-tier Tribunal Judge dated 19 March 2024 of the decision of First-tier Tribunal Judge Howard ("the Judge") promulgated on 24 January 2024 ("the decision"). In essence, the appeal is that the Judge made a material misdirection of law as to Appendix EU as the applicable Rule required a "relevant document". For the purposes of the decision, the Judge was required to make the relationship needed to fit within the applicable Rules in relation to the issue of dependency. Reliance was placed by the Secretary of State for the Home Department on the decision in **Batool [2022] UKUT 00219** in which the definition of family member under Appendix EU (Family Permit) was:

> "In short, a 'family member of a relevant EEA citizen' must be a spouse, civil partner or durable partner of a relevant EEA citizen; or be the child or dependent parent of such a citizen, or of that citizen's spouse or civil partner".

2. We have been told by Mr Blackwood that an application was made on behalf of the appellant on the basis that she was a dependant of her parent. That application was clearly made on the wrong basis and we are therefore required to consider the circumstances which the Judge was required to do in relation to a sibling relationship. The Judge treated the sibling relationship as fulfilling the definition of family member under Appendix EU (FP).

3. It was conceded by Mr Blackwood, who appeared in the Court below that this did amount to an error of law because the definition of family member does not encompass a sibling. Effectively, he conceded it was a material error of law. We agree and are grateful for his concession rightly made and find that the Judge made a material error of law in the decision and that therefore the decision cannot stand.

4. We then indicated we were minded to re-make the decision and keep the matter within the Upper Tribunal. The parties agreed and asked for a short period of time to marshal their arguments which we were happy to consent to. We then heard submissions from both sides.

5. We accept from Mr Blackwood that he made additional submissions before the Judge in relation to Section 55 of the Borders Act 2009 ("Section 55") although there is no reference to that in the decision.

6. However, it is clear that there are only two grounds of appeal which were mounted under the Citizens' Rights Appeals (EU Exit) Regulations 2020 ("the Regulations"). It is clear that the Judge considered Regulation 3 of those Regulations which was the basis of appeal.

7. Those two grounds of appeal were not pursued before us in the Upper Tribunal. Those two grounds are either whether as indicated the requirements of Appendix EU were met or secondly, whether there was a breach of the withdrawal agreement.

8. Mr Blackwood's submissions were that although neither of those two grounds of appeal are being pursued, Section 55 essentially- and with no disrespect intended to his submissions taken quite shortly- he submitted that Section 55 would prevail over the clear Immigration Rules relying primarily upon Regulations 8(3) and 9(4) of the Regulations. Effectively he submitted that the decision of the Secretary of State for the Home Department, was ultra vires and not "in accordance with the law" under Section 82 of the Nationality, Immigration and Asylum Act 2002. Mrs Nwachuku submitted that we were to consider narrowly only the two grounds of appeal and that these submissions were outside those grounds of appeal.

9. We reject the submissions of Mr Blackwood. We do not consider that the submissions that he argued before us under Section 55 come within the potentially arguable grounds of appeal and that the Rules in relation to the position are clear and that there is no basis for allowing wider submissions than those contained within the grounds of appeal. In that regard although the Judge

did not consider the Section 55 submissions as we see it from the decision ,if he had, we find that he would be bound to reject those submissions.

10. We intend no disrespect to Mr Blackwood who made wider submissions before us by saying that we consider the point a narrow one and one that can be dealt with relatively shortly in the way that we have. In all the circumstances we find that the Judge made a material error of law. We re-make the decision and we dismiss the appeal.

Conclusion

11. The Judge made a material error of law.

12. We retained the appeal. We re-make the decision and dismiss the appeal.

Anthony Metzer KC

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 May 2024