



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002376
First-tier Tribunal No:
EA/01402/2023

THE IMMIGRATION ACTS

Directions Issued:
On the 30 July 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

Secretary of State for the Home Department

Appellant

and

Kulwinder Kaur
(NO ANONYMITY ORDER MADE)

Respondent

DIRECTIONS

1. The Secretary of State for the Home Department appeals with permission against the decision of First-tier Tribunal Judge Hendry promulgated on 15 April 2024, in which Ms Kaur's appeal against the refusal of her application for an EU Family Permit was allowed. The appeal was allowed based primarily on her husband's appeal being allowed, with the same underlying factual basis.
2. There were previous requests in both the First-tier Tribunal and the Upper Tribunal to link this appeal to that of Ms Kaur's husband, Mr Malkiat Singh, UI-2024-001914, EA/00881/2023 which for administrative reasons did not occur in the First-tier Tribunal with the appeals being heard separately. In the Upper Tribunal, there were practical reasons why the error of law hearings in both cases could not be heard on the same date.
3. The decision in the case of Mr Malkiat Singh, UI-2024-001914, EA/00881/2023 was heard on 2 July 2024 and the decision now promulgated, in which an error of law was found and the appeal remade to dismiss it on all grounds. A copy of the decision is attached.
4. In circumstances where the present appeal was allowed primarily in reliance of findings in the earlier appeal, which have now been overturned and the appeal dismissed; it is my preliminary view that in the present appeal the First-tier Tribunal erred in law in allowing Ms Kaur's appeal without any specific reference

to the text of the relevant provision in Appendix EU (FP) to the Immigration Rules which did not, on the facts of this or Mr Singh's appeal, provide that dependency was to be presumed. It is further my preliminary view that the decision of the First-tier Tribunal should be set aside for this reason and the appeal remade to dismiss it on all grounds. Although Judge Hendry did not make any finding in the alternative as to dependency (which Judge Dieu did in Mr Singh's case) it appears the same underlying evidence was relied upon by both appellants and therefore the same factual finding would be inevitable in both cases.

5. In these circumstances, the Upper Tribunal is minded to find a material error of law in the decision of the First-tier Tribunal, set aside the decision of the First-tier Tribunal and substitute the decision on appeal to dismiss the appeal.

Direction

Any party who is opposed to this course of action is directed to inform the Tribunal in writing (giving reasons), not later than 14 days after the date on which these directions are sent by the Upper Tribunal.

Following that period, if there is no reasoned objection to this approach, these directions will stand as the decision in UI-2024-002376 to find an error of law, set aside the decision and remake the appeal to dismiss it on all grounds.

If there is a reasoned objection to this approach, the appeal will remain listed for hearing on 2 August 2024.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th July 2024



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001914
First-tier Tribunal No:
EA/00881/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 July 2024

Before

UPPER TRIBUNAL JUDGE JACKSON
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Malkiat Singh
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms A Nolan, Senior Home Office Presenting Officer
For the Respondent: No attendance

Heard at Field House on 1 July 2024

DECISION AND REASONS

1. The Secretary of State for the Home Department appeals with permission (as per the re-issued decision dated 12 August 2023) against the decision of First-tier Tribunal Judge Dieu promulgated on 8 June 2023, in which Mr Singh's appeal against the decision to refuse his application for an EU Family Permit dated 15 January 2023 was allowed. For ease we continue to refer to the parties as they were before the First-tier Tribunal, with Mr Singh as the Appellant and the Secretary of State as the Respondent.
2. The Appellant is a national of India, born on 1 January 1952, who applied on 23 October 2022 under the European Union Settlement Scheme for a Family Permit as a dependent parent-in-law of an EEA Sponsor in the United Kingdom.
3. The Respondent refused the application on 15 January 2023 on the basis that the relationship between the Appellant and the Sponsor was not accepted (as there was no original birth certificate provided) and because there was

insufficient evidence of dependency. Whilst there were three money transfer receipts, there was no evidence of the Appellant's personal circumstances or expenses and no evidence that the money transferred was for the Appellant's essential needs.

4. Judge Dieu considered the appeal on the papers and allowed it on the following grounds. First, it was accepted that the parties were related as claimed, despite an inconsistency in the birth certificate submitted. Secondly, on the basis that as the Appellant was a direct relative in the ascending line, with the application made after the specified date and the Sponsor being over the age of 18; dependency was assumed under the Immigration Rules. Judge Dieu went on to state that if he was wrong that dependency was assumed, then there was insufficient evidence to have established this.

The appeal

5. The Respondent appeals on the sole ground that the First-tier Tribunal erred in law on the issue of dependency. In accordance with paragraph b(i)(cc) of the definition of dependent parent in Annex 1 to Appendix EU (FP), dependency is only assumed where the application was made after the specified date but before 1 July 2021.
6. Ms Nolan attended the oral hearing on behalf of the Respondent and there was no attendance by or on behalf of the Appellants. We were satisfied that the Appellants had been served with notice of the hearing via the Sponsor in the United Kingdom, which was the only contact details given to the Upper Tribunal, including an express request for the Appellant's address. There had been no request for an adjournment, no rule 24 response and no other contact with the Upper Tribunal. We considered that it was in the interests of justice to proceed with the hearing.
7. In oral submissions, Ms Nolan relied on the ground of appeal and the skeleton argument previously filed as to the legal error. She invited us to find an error of law in the decision of the First-tier Tribunal and to remake the appeal to dismiss it as the requirements of Appendix EU (FP) had not been met and findings had already been made by the First-tier Tribunal in the alternative that dependency had not been established.

Findings and reasons

1. In the decision of the First-tier Tribunal, the relevant parts of the Immigration Rules are not set out, nor is there any specific reference to the relevant provision in issue, which in the definition of dependent parent in Annex 1 to Appendix EU (FP), requires an applicant to be:

(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; or

(ii) dependent on the qualifying British citizen (or on their spouse or civil partner) at the date of application or, where the date of application is after the specified date, at the specified date, and (unless the qualifying British citizen is under the age of 18 years at the date of application or, where the date of application is after the specified date, the qualifying British citizen was under the age of 18 years at the specified date) that dependency is assumed; and

(c) this sub-paragraph applies (and the applicant therefore has to meet no requirement as to dependency) where the spouse, civil partner or durable partner of the applicant (and with whom they reside) has been granted:

(i) an entry clearance under this Appendix in the form of an EU Settlement Scheme Family Permit as a dependent parent of the relative EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner, and that entry clearance has not been revoked or otherwise ceased to be valid; or

(ii) indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU to these Rules as a dependent parent 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 that indefinite or limited leave has not lapsed or been cancelled, curtailed, revoked or invalidated.

2. For completeness, Annex 1 to Appendix EU (FP) also defines 'joining family member' as:

a person who is a family member of a relevant EEA citizen (in accordance with sub-paragraph (a)(i)(bb), (c), (d) or (e) - together, where applicable, with the second sub-paragraph (a) or the second sub-paragraph (b) - of that entry in this table) and who (save, in the case of a child, where the person was born after the specified date, was adopted after that date in accordance with a relevant adoption decision or after that date became a child within the meaning of that entry in this table on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that entry):

(a) was not resident in the UK at any time before the specified date; or

(b) was resident in the UK and Islands before the specified date, and:

(i) one of the events referred to in sub-paragraph (b)(i) or (b)(ii) in the entry for 'continuous qualifying period' in the table at Annex 1 to Appendix EU to these Rules has occurred, and after that event occurred they were not resident in the UK and Islands again before the specified date; or

(ii) the event referred to in sub-paragraph (a) in the entry for 'supervening event' in the table at Annex 1 to Appendix EU to these Rules has occurred, and after that event occurred they were not resident in the UK and Islands again before the specified date.

3. The Appellant in the present case was a joining family member as there is nothing to suggest that he has ever been resident in the United Kingdom. As such, with an application made on 23 October 2022, he falls within paragraph (b) (i)(cc) of the definition of dependent parent and dependency is not therefore assumed. The Appellant is therefore required to show that he is dependent on the EEA national Sponsor. The First-tier Tribunal erred in law in finding otherwise, it seems without having proper regard to the date of application which in this case was after 1 July 2022 - dependency is only assumed for applications made after the specified date and before 1 July 2022.
4. For these reasons, the First-tier Tribunal erred in law in failing to properly apply the requirements of Appendix EU (FP) for which the Appellant had to establish dependency, it was not assumed on the facts of his application. It is therefore necessary to set aside the decision of the First-tier Tribunal. In circumstances where in paragraph 6 of the First-tier Tribunal decision the alternative was considered if the Judge was wrong as to dependency being assumed (as he was) and a clear finding was made that dependency had not been established on the evidence; we remake the appeal to dismiss it on all grounds. There are no further facts which are required to be made, the appeal cannot succeed.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

We set aside the decision of the First-tier Tribunal.

The appeal is remade as follows:

The appeal is dismissed on all grounds.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9th July 2024