



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006208
First-tier Tribunal No:
EA/02912/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 April 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

VELEDIN MUKA
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Erilda Kaci (the Sponsor)

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 14 March 2023

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 10 March 1938. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules.

2. The appellant applied for an EUSS Family Permit on 13 October 2021 as the close family member of an EEA national, stating in his application form that his EEA national sponsor was his nephew-in-law, Gkenti Dedes, a national of Greece, who was married to his niece, Erilda Kaci, an Albanian national. His application was refused on 21 February 2022, on the grounds that he had not provided adequate evidence to prove that he was a 'family member' - (a spouse; civil partner; durable partner; child, grandchild, great-grandchild under 21; dependent child, grandchild, great-grandchild over 21; or dependent parent, grandparent, great-grandparent)- of a relevant EEA national or of their spouse. The respondent considered that the appellant's relationship to his sponsor did not come within the definition of 'family member' of a relevant EEA citizen as stated in Appendix EU (Family Permit) to the Immigration Rules.

3. The appellant lodged an appeal against the respondent's decision. In his notice of appeal, at section 3B, he listed the documents upon which he relied and which were the same documents as those submitted with his application form. Those included Erila Kaci's marriage certificate proving her marriage to Gkenti Dedes, a birth certificate for Erilda Kaci proving she was the daughter of Lindita Kaci and a birth certificate for Lindita Kaci which "*proves she is my daughter and as such Erilda Kaci is my niece*". At section 3D the appellant stated, in his grounds of appeal, that he had sent all adequate evidence to prove his relationship with the EEA national as required for an EUSS Family Permit and he listed the documents again, which included Lindita Kaci's birth certificate, proving that he was her father and "*as such Erilda Kaci's grandfather*".

4. The appellant requested that his appeal be determined on the papers without a hearing.

5. The appeal then came before First-tier Tribunal Judge Jarvis on 20 July 2022 and was determined on the papers, as requested by the appellant. The judge found that, taken at its highest, Ms Kaci was the appellant's niece and, as such, the appellant was not a family member for the purposes of the definition in Annex 1 to Appendix EU (Family Permit). On that basis the judge found that the appellant could not succeed under FP6 of Appendix EU (Family Permit) and he accordingly dismissed the appeal.

6. The appellant sought permission to appeal to the Upper Tribunal against Judge Jarvis's decision. He asserted in the grounds that the judge was wrong to hold that he was the uncle of Erilda Kaci, when he was her grandfather, as proved in the documents sent with his application and that, as such, he met the requirements of the immigration rules in Appendix EU (Family Permit).

7. Permission was granted in the First-tier Tribunal on the basis that the reference to niece seemed to be a mistake and that the judge had arguably erred by considering the relationship of uncle/niece rather than grandfather/granddaughter.

8. The matter then came before me at a hearing. The appellant joined the hearing remotely and the sponsor, Erilda Kaci, appeared at the hearing in person.

9. Mr Clarke accepted that there had been a mistake in identifying the relationship between the appellant and Ms Kaci. He said that the appropriate course, in the interests of fairness, considering that the appellant was a litigant in person, was to set aside the judge's decision and to re-make the decision at a further hearing.

10. I referred Mr Clarke to the fact that there was no evidence of the appellant being dependent upon the sponsor in the initial application form or in the papers before the First-tier Tribunal, and that the appellant had requested a papers determination of the appeal, so that the appeal could not have succeeded in any event on the evidence available to the judge. Mr Clarke was content, however, for the appellant to be given a further opportunity to produce such evidence at a resumed hearing.

11. However, upon enquiry of Ms Kaci, it was apparent that there was no such evidence. She said that she had believed that it was only necessary to establish the relationship and was not aware of the requirement of financial dependence. She confirmed that the appellant was not, and had never been, financially dependent upon her. In the circumstances, Mr Clarke agreed that there was no point in having a resumed hearing as the appeal could not succeed in any event. He asked me to re-make the decision by dismissing the appeal.

12.I explained to Ms Kaci the requirements of the Immigration Rules in FP6 of Appendix EU (Family Permit) and the definition of 'family member', and explained why the appeal could not succeed and that I had no choice but to dismiss the appeal.

13.I set out my reasons in more detail as follows.

Decision

14.The relevant parts of Appendix EU (Family Permit), for the purposes of this appeal, are FP6.1(b) and Annex 1.

15. FP6.1(b) sets out the requirement that the applicant is "*a family member of a relevant EEA citizen*". The definition of 'family member' is found at Annex 1.

16.In Annex 1, "family member of a relevant EEA citizen" is defined as including "*(d) the child or dependent parent of a relevant EEA citizen*"; "dependent parent" is defined as "*(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)..(i) dependent on the relevant EEA citizen or on their spouse or civil partner*"; and "*direct relative in the ascending line*" includes: *(i) a grandparent*".

17.The respondent's decision of 21 February 2022 refusing the appellant's application stated that his relationship to the sponsor did not come within the definition of a 'family member of a relevant EEA citizen', which was stated to be "*a spouse; civil partner; durable partner; child, grandchild, great-grandchild under 21; dependent child, grandchild, great-grandchild over 21; or dependent parent, grandparent, great-grandparent*".

18.Judge Jarvis focussed on the stated uncle/niece relationship and dismissed the appeal on the basis of that relationship falling outside the definition of 'family member'. However, the relationship of non-dependent grandparent/grandchild also fell outside that definition. The respondent had not specified, in the refusal decision, which relationship was considered, but simply said that the relationship did not fall within the relevant definition of 'family member'. Clearly, the appellant's application could not succeed on either basis.

19.There was no evidence provided with the appellant's application under the EUSS to suggest that he was dependent upon the sponsor, as is apparent from pages C29 and C30 of the respondent's appeal bundle, where all the documents were listed. Neither was there any such evidence before Judge Jarvis. Ms Kaci has agreed that no such evidence could be produced as her grandfather has not been and is not financially dependent upon her. In the circumstances, the appellant's application could not, and cannot succeed as he cannot show that he meets the definition of a family member of a relevant EEA citizen under Appendix EU (Family Permit) of the Immigration Rules.

20.Accordingly even if Judge Jarvis had erred by basing his decision upon the relationship of uncle/ niece rather than grandparent/grandchild, he was correct to find that the appellant was not a family member for the purposes of the definition in Annex 1 and therefore could not succeed under FP6 of Appendix EU (Family Permit). I therefore uphold his decision, since the error he made was not material. Alternatively, if the error in the relationship is taken to be material and Judge Jarvis's decision is set aside, the outcome remains the same and the decision is re-made by the appeal being dismissed.

Notice of Decision

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside and the decision to dismiss the appeal stands. Alternatively, the decision is set aside and is re-made by dismissing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 March 2023