



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006237

First-tier Tribunal No: EA/12891/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 May 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROSEMOND BIRAGO ADU
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Unrepresented

Heard at Field House on 30 March 2023

DECISION AND REASONS

1. We shall refer to the Respondent as the Appellant as she was before the First-tier Tribunal.
2. On 13 December 2022 the First-tier Tribunal (Judge Boyes) granted the Secretary of State for the Home Department permission to appeal against the decision of the First-tier Tribunal (Judge Davey) to allow the Appellant's appeal against the decision of the Secretary of State for the Home Department on 17 February 2021 to refuse her application for entry clearance under a family member under Appendix EU.
3. The judge accepted that the Appellant and the Sponsor were adult siblings and that the Sponsor, an Austrian national was exercising treaty rights in the UK.
4. The Secretary of State's grounds assert that the judge materially erred by failing to correctly engage with the reasons why the Appellant was refused entry clearance under Appendix EU (family permit) of the Immigration

Rules. The Appellant was not a family member as defined in Annex 1 of Appendix EU (family permit).

5. The First-tier Tribunal allowed the appeal on the papers concluding that the evidence showed the relationship and evidence of remittances, contact and conversations between the Appellant and the Sponsor. The judge concluded that the Appellant met the requirements of “the Regulations” and went on to allow the appeal.
6. The Appellant’s sister, Linda Akraasi attended the hearing before me. She explained that she was expecting a solicitor to attend, but the solicitor had not answered her calls. She did not seek an adjournment. I decided it was in the interests of justice to proceed to determine the matter. She stated that there was no error because the application had been made before 31 December 2020. I pointed out that this issue had not been raised in the grounds but, in any event, the date of the application made by the Applicant was 8 February 2021. She conceded that she may have been confused with an earlier application that had made.

Error of Law

7. The judge materially erred. The application for entry clearance made reference to the EEA Regulations; however EU free movement rights lost both their direct affect and their enforceability from 11 pm on 31 December 2020. The Immigration and Social Security Co- ordination (EU Withdrawal) Act 2020 (“the 2020 EU Withdrawal Agreement”) revoked the 2016 Regulations and prevents them (along with relevant rights deriving from provisions of the treaties to the extent that they are not implemented in domestic law) from continuing to have affect as retained the EU law, pursuant to Sections 2 and 4 of the Withdrawal Act 2018. Since 1 January 2021 the Secretary of State has not been able to consider an application for an EEA family permit, except where a valid application was made before that date (or where paragraph 3(2) of Schedule 3 to the 2020 consequential Regulations applies, which is not the position here).
8. This Appellant did not make an application under the EEA Regulations before the end of the transition period.
9. The ECO considered the application under the EU Settlement Scheme. In order to succeed under Appendix EU (family permit) the Appellant would have to meet the definition of a family member as defined in Annex 1 of Appendix EU. The Appellant does not do so. It was not open to the judge to consider the application under the 2016 Regulations and/or to find that the Appellant is a family member. She cannot meet the requirements of Annex 1. The appeal cannot succeed under Appendix EU.
10. I set aside the decision of the First-tier Tribunal. I dismiss the appeal under Appendix EU of the Immigration Rules

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber