



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002554

First-tier Tribunal Nos: EU/55262/2023
LE/00822/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 20 December 2024**

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

Georgios Tsigkalos

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Stedman, Imperium Chambers

For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at Field House on 8 November 2024

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Clarkson dismissing his appeal against the respondent's decision to refuse his application for a Family Permit as the dependent child over 21 of a relevant EU citizen.
2. The applicant is a Greek citizen, born in 1979. His mother is also a Greek citizen and is resident in the UK. It is accepted that she is a relevant EU citizen as defined in Appendix EU (FP).
3. On 17 March 2023, the applicant applied for a Family Permit under Appendix EU (FP). The respondent accepted that he was his mother's child but she was not satisfied that he had established that was dependent on her as required. In the respondent's review, the respondent further clarified that she was not satisfied as to the respondent's dependency on his mother during the six months prior to his application, noting in particular a lack of evidence of financial support in October and November 2022.

4. After considering the oral and documentary evidence, Judge Clarkson found that the appellant had in fact been dependent on his mother to meet his essential living needs between May 2022 and June 2023. She then dismissed the appeal on the grounds that the appellant had not established that he had been dependent on his mother prior to the specified date of 31 December 2020, as required by Appendix EU.
5. The appellant was granted permission to appeal on the grounds that he had made an application for a Family Permit, and that therefore his appeal should have been decided with reference to the requirements of Appendix EU (FP), not Appendix EU. The definition of dependent child over 21 for the purposes of Appendix EU (FP) required dependence only at the date of application, not the specified date, unless an applicant was not a joining family member.
6. Permission was granted on this basis, and in her Rule 24 response, the respondent conceded that the appeal should have been considered under Appendix EU (FP), not Appendix EU. The respondent nonetheless opposed the appeal on the grounds that this error made no difference. The respondent relied for this argument on what purported to be an excerpt from Annex 1 to Appendix EU(FP), defining a child as:

“(a) The direct descent under the age of 21 years of a relevant EEA citizen [..]

“(b) (i) (where sub-paragraph (a)(i) above does not apply) direct descendant aged 21 or over of the a relevant EEA citizen [...]; and

“(ii)(aa) dependent on the relevant EEA citizen (unless the applicant was previously granted limited leave to enter or remain under paragraph EU3 or EU3A of this Appendix as a child on the basis that sub-paragraph (a) above applied or under its equivalent in the Islands on that basis) dependent on (as the case may be):

“(aa) the relevant EEA 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;”

7. This is, in fact, the definition contained in Annex 1 to Appendix EU, not Annex 1 to Appendix EU (FP). The definition contained at Annex to Appendix EU (FP) is:

“[...] (b)(i) the direct descendant aged 21 years or over of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; and

“(ii)(aa) dependent on the relevant EEA citizen or on their spouse or civil partner:

“(aaa) (where sub-paragraph (b)(ii)(aa)(bbb) below does not apply) at the date of application; or

“(bbb) (where the date of application is after the specified date and where the applicant is not a **joining family member**) at the specified date {..}” [emphasis in original]

8. The appeal then came before me for hearing.

9. Ms Blackburn confirmed that, in accordance with the concession made in the Rule 24 response, the appeal must be determined in accordance with Appendix EU (FP), not Appendix EU.
10. I then drew Ms Blackburn's attention to the definition of child contained in Annex 1 to Appendix EU (FP). She accepted that this definition applied.
11. I asked Ms Blackburn if it was disputed that the appellant was a "joining family member". She considered the documents and confirmed that it was not.
12. The First-tier Tribunal Judge's finding that he was dependent on his mother at the date of application has not been challenged.
13. Ms Blackburn then sensibly conceded that all of the requirements of the rules were met and the appeal fell to be allowed.

The respondent's conduct of this appeal

14. It appears from the respondent's review that the respondent defended the appeal before the First-tier Tribunal on a proper legal basis. The review defended the refusal decision not on the grounds that the appellant had not applied under Appendix EU(FP), nor that he was not a joining family member, nor that he had not been dependent on his mother prior to the specified date. The respondent's position was that she was not satisfied that he had been dependent on his mother at the date of application. This was the relevant factual question under Appendix EU (FP). The Judge then came to a different conclusion from the respondent on that factual question, but unfortunately applied the wrong law.
15. In her Rule 24 response, the respondent conceded that the appeal fell to be determined with reference to Appendix EU (FP), but then she then relied on the definition of child found in Annex 1 to Appendix EU, not Appendix EU (FP). She thus fell directly into the same error that she had accepted had been made by the First-tier Tribunal Judge, and in spite of the fact that the Appendix EU (FP) definition was quoted in full in the appellant's grounds of appeal. Mr Stedman informed the Tribunal, moreover, that he had emailed the respondent prior to the hearing before the Upper Tribunal in an attempt to bring the respondent's error to her attention, but had received no response.
16. Mr Stedman informed the Tribunal that under the circumstances, he is likely to make an application for his client's costs in preparing for and attending the hearing.

Notice of decision

17. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside. I remake the appeal by allowing it.

Costs

18. I consider that the respondent's defence of the appeal before the Upper Tribunal was based on an obvious error, and one that the appellant's counsel states he attempted to bring to the respondent's attention prior to the hearing. However, I express no view of whether proceeding on a clearly erroneous basis under those circumstances is sufficient to constitute "unreasonable conduct". Moreover, the respondent must be given a fair opportunity to explain how this

error occurred and why it was not rectified after the appellant brought it to her attention (if it can be established that he did so).

19. If the appellant wishes to apply for the respondent to pay his costs of any portion of the appeal before the Upper Tribunal, he must write to the Tribunal within 21 days of this decision being sent, setting out the grounds on which he considers that this is appropriate. He may wish to have reference to the principles set out in Presidential Guidance Note No. 2 of 2018.¹ He should attach any evidence on which he seeks to rely that is not already before the Tribunal, such as the correspondence with the respondent with regard to the Rule 24 response to which counsel referred during the hearing, as well as a schedule of costs. The representations, evidence and schedule of costs must be served on the respondent at the same time.
20. Should the respondent wish to oppose any such application for costs, she must do so by way of written submissions filed with the tribunal and served on the appellant, no later than 28 days after the appellant's costs submissions are sent to her.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 November 2024

¹ <https://www.judiciary.uk/wp-content/uploads/2018/07/costs-guidance-2018.pdf>