



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2022-003891**
UI-2022-003892
First-tier Tribunal No:
EA/00573/2022
EA/00574/2022

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 30 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

SHEFQET COLLAKU
SANIJE COLLAKU
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER, TIRANA

Respondent

Representation:

For the Appellant: Ms E. Sanders, Counsel, instructed by Turpin & Miller LLP
For the Respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 23 June 2022, First-tier Tribunal Judge Hutchinson (“the judge”) dismissed the appellants’ appeals against two

linked decisions of the respondent dated 5 January 2022 to refuse their applications for family permits under Appendix EU Family Permit, which is part of the EU Settlement Scheme (“the EUSS”).

2. The appeals to the First-tier Tribunal were brought under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020.
3. The appellants now appeal to this tribunal with the permission of First-tier Tribunal Judge Gibbs.

Factual background

4. The appellants are citizens of Albania. They are a husband and wife couple whose Albanian son lives with his Greek wife, Venitia Balli (“the sponsor”) in the UK. On 11 June 2021, they applied for a family permit under Appendix EU Family Permit as dependent parents. Their applications were refused on the sole basis that the sponsor was not in the UK at the time of their applications. They appealed.
5. The judge heard the appeal on the papers. She found that the sponsor was, in fact, resident in the United Kingdom at the relevant time (para. 8) but found that the appellants had not demonstrated dependency. The judge analysed the proffered evidence of dependency, found it to be lacking, and dismissed the appeal.

Ground of appeal

6. The grounds of appeal contend that the judge erred by looking for evidence of dependency. Under Appendix EU Family Permit, dependency was assumed in relation to applications made before 1 July 2021.

The law

7. Dependency is assumed under the definition of “dependent parent” contained in Annex 1 of Appendix EU Family Permit in relation to pre-1 July 2021 applications. See paragraph (b)(i)(aa) of that definition.

Submissions

8. By a rule 24 notice dated 22 September 2022, Mr C. Avery of the Secretary of State’s Specialist Appeals Team stated that the respondent did not oppose the appellant’s appeal, inviting the Upper Tribunal to allow the appeal and remit the case to the First-tier Tribunal to be reheard.
9. Ms Sanders submitted that the judge’s unchallenged finding that the sponsor was resident in the United Kingdom meant that the appeal was bound to succeed, and invited me to remake the decision, allowing the appeal.

Discussion

10. As I held at the hearing, the judge erred by holding the appellants' apparent lack of dependency against them, since dependency was assumed by the Immigration Rules. I set the decision of the judge aside. Since there was no challenge to the judge's finding that the sponsor was resident in the UK at the time of the application, I preserve that finding and proceed to remake the decision in this tribunal.
11. The sole basis upon which the appellants' applications were refused has been addressed by the judge's preserved findings that the sponsor was resident in the United Kingdom at the time their applications under the EUSS were submitted. That being so, it follows that the appellants meet the requirements of Appendix EU Family Permit, and the appeal must be allowed.

Notice of Decision

The decision of Judge Hutchinson involved the making of an error of law and is set aside.

I remake the decision and allow the appeals of both appellants.

No anonymity direction is made.

Signed Stephen H Smith

Date 7 December 2022

Upper Tribunal Judge Stephen Smith