IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003677

First-tier Tribunal No: EA/16496/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 July 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ASIF HAMEED
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Timson, instructed by M A Consultants
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 12 July 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 26 March 1985. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for settled or pre-settled status under the EU Settlement Scheme (EUSS).

2. The appellant's immigration history is of relevance and can be summarised as follows.

3. The appellant initially applied for and, on 9 February 2017, was refused an EEA family permit as the dependent relative of an EEA (Norwegian) national, Habiba Yasmin Hussain, his cousin/sister-in-law. The application was refused on the basis that he had failed to supply sufficient evidence of being related as claimed or of financial dependency. The appellant was refused an EEA family permit again on 7 March 2017 as he had failed on that occasion to show that his sponsor, the same EEA national, was a qualified person exercising treaty rights in the UK. On 16 June 2017 the appellant was issued with an EEA family permit, in relation to the same sponsor, which was valid until 15 December 2017. He entered the UK in July 2017. On 2 December 2017 he applied for a residence card as the dependent relative of the same EEA sponsor, but that application was refused on 9 April 2018 as he had failed adequately to prove his dependency on his sponsor since entering the UK. A further application made on 12 March 2019 was similarly refused. The appellant then made a further application which was refused on 18 May 2020 on the grounds that he had failed to show that he was a dependent relative of the EEA national sponsor since his family permit had expired on 15 December 2017, and he therefore did not hold a valid family permit or residence card.

4. The appellant then made an application under the EUSS on 21 June 2021 as the dependent relative of the same EEA national sponsor with whom he claimed to be living. His application was refused on 1 December 2021 on the basis that he had failed to provide sufficient evidence to confirm that he was the dependent relative of the EEA sponsor since he had not been issued with a family permit or residence card as such under the EEA Regulations.

5. The appellant appealed against that decision. His evidence for the appeal was that the reason for his application of 2 December 2017 being refused was that there had been a family dispute and his sponsor had written to the Home Office informing them that she was no longer sponsoring him. He did not receive the refusal decision until much later and was under the impression that his application was still pending, but when he later found out he immediately re-submitted the application. His sponsor had, he said, since written to the Home Office explaining the whole situation and was now supporting his application. The appellant stated that he was dependent upon his EEA national sponsor who paid for all his expenses and accommodation and that she supported him and cared for him when he suffered a severe head injury. His sponsor was his cousin as well as his brother's wife. The sponsor, Ms Hussain, wrote a letter of support for the appeal providing the same explanation.

6. The appellant's appeal was heard on 25 May 2022 by Designated First-tier Tribunal Judge McClure. At the beginning of the hearing, the appellant's counsel advised the Tribunal that he was professionally embarrassed and could no longer act for the appellant and was withdrawing. The appellant did not want the hearing to be adjourned and so the case proceeded without his legal representative. The appellant and the sponsor both gave oral evidence before the judge. The sponsor explained that after the appellant had entered the UK she and her husband, the appellant's brother, had had marital problems and she had written to the Home Office indicating that she no longer supported the application. The sponsor gave evidence before the judge admitting that she had not been supporting the appellant's application for the period of at least December 2017 to May 2021, but the judge noted that she had also claimed in her statements and evidence that the appellant was living with her and was being financially supported by her throughout.

7. The judge found nothing in the claim in regard to the appellant having a serious head injury and ongoing medical problems, noting that the medical evidence did not

suggest any ongoing treatment or problems. The judge noted that the appellant did not have a family permit at the time of his present application, as the permit previously issued had expired after six months in December 2017. On that basis alone the judge found that the appellant could not meet the requirements of the immigration rules in EU11 or EU14. The judge found further that the claim that the appellant was living with the sponsor and being supported by her was not credible and he found that, for the period set out by the sponsor of December 2017 to May 2021, the appellant was not living at her home and was not being supported by her. The judge did not, therefore, accept that the appellant was dependent upon the sponsor and he concluded that he could not meet the requirements of EU11 or EU14. The judge accordingly dismissed the appeal, in a decision promulgated on 28 June 2022.

8. The appellant then sought permission to appeal to the Upper Tribunal on the grounds that the judge had failed to take into account that he fell within the personal scope of the Withdrawal Agreement under Article 10(2) since he had previously been recognised as a family member under Regulation 8 of the EEA Regulations 2016 and, accordingly, the fact that he did not have a valid family permit at the time of his last application was not fatal. The grounds asserted that the need to hold a valid relevant document was contrary to Articles 13(3),(4), 18(1) and 9(i) and (vi) of the Withdrawal Agreement, and that the decision to deny the appellant's application as he did not hold a valid family permit at the time of his last application was disproportionate under Article 18(r) of the Withdrawal Agreement. It was asserted further that the judge had failed to give adequate reasons for not finding the appellant's claim to be credible and for not finding that there was continuing financial dependency upon the sponsor until the date of the hearing.

9. Permission was granted in the First-tier Tribunal and the matter then came before me.

10.At the hearing, Mr Timson requested that the matter be stayed behind the judgment of the Court of Appeal in the appeal against Celik (EU exit, marriage, human rights) [2022] UKUT 220 which was due to be issued shortly, since it involved the same issues, and he advised me that Mr Bates had no objection to that course. However I advised the parties that the main issue in this case appeared to be credibility in relation to the claimed dependency by the appellant upon the sponsor and that that would not be impacted by the decision in Celik. I therefore refused to adjourn the hearing and both parties made submissions before me.

11.Mr Timson relied upon the grounds of appeal. Mr Bates submitted that the judge had made proper findings on the question of dependency. Mr Timson, in response, submitted that dependency had been accepted up until the date of the hearing and therefore there had been a finding that there was dependency.

Discussion

12.As an initial observation I found it of some concern that Mr Timson had no instructions as to why counsel for the appellant had been professionally embarrassed and withdrawn at the hearing before the First-tier Tribunal when, as he confirmed, the same solicitors continued to represent the appellant.

13.That aside, I consider there to be no merit in the grounds.

14.In so far as the first ground relies upon the appellant remaining a family member of the sponsor under Regulation 8, as asserted at [19], that is clearly not the case. The

appellant's family permit expired on 15 December 2017 and his further applications had been refused. Accordingly he ceased to be a family member of the sponsor at that time, in accordance with Regulation 7(3) of the EEA Regulations 2016, which required him to continue to satisfy the conditions of dependency in Regulation 8(2) and required that the family permit remained in force. The appellant had not acquired permanent residence and therefore he no longer benefitted from rights under the EEA Regulations 2016 as a family member of the sponsor. Likewise, and given that any accepted dependency ended in December 2017, he could not meet the requirements of EU11 or EU14 of Appendix EU as a family member (with reference to the definition at Annex 1(e)), as the judge properly found. For the same reasons the appellant could not come within the personal scope in Article 10 of the Withdrawal Agreement in Article 10(2) nor, given that there was no outstanding application for facilitation of entry and residence at the specified date, could he seek to benefit from Article 10(3).

15.In so far as it is suggested that the latter point was one yet to be resolved by the Court of Appeal in Celik, that is clearly not the case, given that the judge in this appellant's case did not find there to have been any dependency by the appellant upon the EEA national since December 2017 and at the time of the specified date of 31 December 2020. Any question of proportionality under Article 18(r) of the Withdrawal Agreement or otherwise clearly did not, therefore, arise. I reject the assertion in the grounds of appeal that the judge failed to give proper reasons for his adverse findings on the question of dependency, since he clearly did give cogent reasons for his conclusion at [33] and [34]. As for the assertion in the grounds that the judge appeared to have accepted that there was dependency from June 2021 to the date of the hearing, I find nothing in the judge's findings to support such a suggestion. The judge clearly did not find the evidence of the appellant or the sponsor to be credible or reliable in any respect. In any event, dependency from June 2021 could not have assisted the appellant in giving rise to any rights under the EEA Regulations 2016 or the EUSS since the category of extended family members no longer existed after 31 December 2020.

16.For all these reasons I find there to be no merit in the grounds. The judge was fully and properly entitled to make the adverse findings that he did and to reach the conclusions that he did. Accordingly I uphold his decision.

Notice of Decision

17.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 July 2023