



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/01636/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12<sup>th</sup> July 2019  
And 31<sup>st</sup> October 2019**

**Decision & Reasons Promulgated  
On 12 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE COKER  
UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**[C P]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: unrepresented but Mr Miguel [P] addressed the Tribunal on his behalf

For the Respondent: Mr T Lindsay (on 12<sup>th</sup> July 2019); Mr T Melvin (on 31<sup>st</sup> October 2019), Senior Home Office Presenting Officers

**DETERMINATION AND REASONS**

1. The Tribunal adjourned consideration of the appellant's appeal to permit written submissions to be made by both parties.
2. The appellant is not the biological son of Mr Miguel [P], according to a DNA test undertaken in connection with his application for an EEA family permit to join

who he thought was his father. Following the hearing on 31<sup>st</sup> October we took the view that the issue of whether this appellant should be treated as a family member under regulation 7 was not straightforward. Mr Melvin agreed to provide written submissions within 7 days - which he did - and thereafter Mr Miguel [P] had leave to file written submissions within 7 days thereafter - which he did not. We had informed the parties that we would take a decision on the basis of the submissions made without a further hearing, which we now proceed to do.

3. Mr Miguel [P] is not himself an EU citizen; he is the spouse of an EU national who is exercising Treaty rights and has a permit accordingly. The appellant has been treated for all intents and purposes by Mr [P] as his son since his birth. The appellant's siblings have been acknowledged as direct blood relatives to Mr [P] and their appeals against the refusal of EEA family permits were allowed by us following the hearing on 31<sup>st</sup> October.
4. The respondent does not accept the appellant is or was a member of the household of the Union Citizen or was dependant on the Union Citizen but does accept that some financial remittances were sent by the appellant's father to the appellant's mother. It is correct that the appellant has not and does not reside in the household of the EU citizen – he resides with his mother in Guinea-Bissau.
5. Although the appellant has been treated by Mr [P] as his son, he is not and has never been a family member of Mr [P]'s spouse – who is the EU citizen. He has never lived in the same household and is not and has not – on the evidence before us – been dependent on her. She does not, again on the evidence before us, have parental responsibility for the appellant. Neither the Regulations nor the Directive enable family permits to be issued to a person in the situation of the appellant.
6. It may be that the circumstances are such that an application under the Immigration Rules could succeed. But it is not possible for us to reach a decision on that not only because there has been no application for such a visa but also there is insufficient evidence provided to enable consideration to be given to such an application.
7. We dismiss the appellant's appeal against the refusal of a family permit.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision and re-make the decision in the appeal by dismissing it

Date 9<sup>th</sup> December 2019



Upper Tribunal Judge Coker