



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

Appeal Number: EA/08332/2021
UI-2021-001280

THE IMMIGRATION ACTS

**Heard at Field House
On: 1 April 2022**

**Decision & Reasons Promulgated
On: 7 June 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**UCHE SABINA CHINAGORO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer,
For the Respondent: Mr Chikwe, solicitor, St. Valchikwe Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge G Clarke promulgated on 10 November 2021. Permission to appeal was granted by Designated First-tier Tribunal Judge Shaerf on 29 December 2021.

Anonymity¹

2. No anonymity direction has been made previously, and there was no application nor apparent reason for one now.

Background

3. The respondent is a national of Nigeria, now aged seventy-five. On 29 December 2020, she made an application for leave to remain under the EU Settlement Scheme (EUSS) as the dependent relative of a relevant EEA citizen. By virtue of a decision dated 27 April 2021, the Secretary of State refused that application and declined to grant the respondent either settled or pre-settled status under the EUSS because the requirements of Appendix EU, Rules 11 and 14, had not been met. The precise reason given was that the respondent had not been issued with a valid relevant document, in the form of a family permit or residence card issued under the EEA regulations.

The decision of the First-tier Tribunal

4. At the hearing before the First-tier Tribunal, the judge heard that the respondent relied upon EU 11 and 14 of Appendix EU, in that she was seeking either indefinite or limited leave to enter or remain as a family member of a relevant EEA citizen. The judge heard oral evidence from the respondent as well as from her sponsor and accepted that the sponsor is the respondent's niece and that she had been financially supporting and accommodating the respondent during the latter's twenty-year residence in the United Kingdom. The judge had regard to the fact that the respondent had succeeded in her visit visa appeal in 2001 which was made on the basis that she was the paternal aunt of the sponsor.

The grounds of appeal

5. There were two grounds of appeal. Firstly, the judge erred in giving too much weight to the sponsor's profession when assessing credibility. Secondly, the judge erred in his understanding of the nature of the decision, in that the relationship was not in dispute and the issue before the judge was whether the respondent was in possession of a relevant document, which was required to succeed under the EUSS.
6. Permission to appeal was granted on the basis sought, primarily with reference to the second ground. In granting permission, the judge commented that consideration had been given to setting aside the decision under Rule 35 of the First-tier Tribunal Procedure Rules, but he had not done so on account of the judge's favourable findings to the respondent.
7. The respondent did not file a Rule 24 response.

The hearing

8. Mr Chikwe confirmed that no Rule 24 response had been prepared. From his comments it was apparent that he opposed the appeal, stating that

permission to appeal should not have been granted. He asserted that there was no provision under the EUSS for a relevant document.

9. Mr Whitwell relied on the grounds as a whole but focused his attention on the second ground which he considered to be dispositive of the appeal. He added the following. The respondent had made no prior application for a residence card and therefore could not succeed under the EUSS as she was ineligible to apply without such a document. Judge Shaerf was of the view that the decision should have been set aside as the application could not succeed but did not do so to preserve the findings which were positive to the respondent. It has been established that the respondent has been residing in the UK for over 20 years, that she is the aunt of the sponsor and dependent upon her. The respondent's skeleton argument before the judge identified two issues, regarding the relationship and did not include the question of whether there was a relevant document. Mr Whitwell invited me to set aside the decision, remake it and dismiss it. He added that if the respondent were to make a human rights application based on her private life and the findings as to having attained twenty years residence, there would be strong reasons for the Secretary of State to grant it.
10. Mr Chikwe argued that the judge considered the relationship and the law. He maintained that there was no requirement of documentation under the EUSS and he had personally not seen any provision that says you have to be documented. He asserted that the respondent met the eligibility requirements under the Scheme. Mr Chikwe argued that the Secretary of State ought to have made an exception but accepted that no such argument was made before the First-tier Tribunal.
11. At the end of the error of law hearing, I concluded that the First-tier Tribunal made a material error of law in allowing the appeal without taking into consideration that the respondent did not hold a relevant document when she made her application under the EUSS. I set aside the decision of the First-tier Tribunal without disturbing positive findings as to the respondent's relationship with her niece or the length of her residence in the UK.
12. I was invited to immediately remake the appeal by Mr Whitwell on the basis of the submissions already made on the part of the Secretary of State. Mr Chikwe had no objection to this and wished only to ask me to record his submissions, which were limited to the following; "*the fact that the (respondent) does not have a residence card or settlement under the 2016 Regulations does not preclude the person from being a dependent under the EUSS.*"
13. At the end of the hearing, I dismissed the appeal.

Decision on error of law

14. There was just one reason for the refusal of the respondent's application as a dependent relative under the EUSS, the lack of a relevant document. Regrettably, the appeal was focused on irrelevant matters. Mr Chikwe argued, strongly but wrongly, that there was no requirement in the Immigration Rules for a residence card prior to making an application under the EUSS.
15. Annex 1 of Appendix EU the definition of a dependent relative includes, at (b), the requirement that the applicant holds a 'relevant document as the dependent relative of their sponsoring person for the period of residence relied upon.'
16. Annex 1 of Appendix EU defines a relevant document as follows.

relevant document	(a)(i)(aa) a family permit (or a letter from the Secretary of State, issued after 30 June 2021, confirming their qualification for one), registration certificate, residence card, document certifying permanent residence, permanent residence card or derivative residence card issued by the UK under the EEA Regulations on the basis of an application made under the EEA Regulations before (in the case, where the applicant is not a dependent relative, of a family permit) 1 July 2021 and otherwise before the specified date;
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17. Both EU 14 and 11 of Appendix EU state that the eligibility requirements for leave to enter or remain, whether limited or indefinite, are met where the Secretary of State is satisfied as to the required evidence of family relationship. In Annex A, the term 'required evidence of family relationship' is defined at (f) as a 'relevant document as the dependent relative of their sponsoring person.'
18. Given the definitions in Appendix EU, there is no support for Mr Chikwe's contention that there is no requirement for a relevant document prior to making an application under the EUSS. Indeed, it is not an argument which he made before the First-tier Tribunal in any event.
19. The First-tier Tribunal materially erred by failing to engage with the reason for the refusal of the respondent's EUSS application and was instead preoccupied with relationship and dependency which were not in issue. For that reason, the decision cannot stand and is set aside, albeit with positive findings preserved.

Decision on remaking

20. Mr Chikwe made the same assertion, that there was no basis for the Secretary of State's insistence on a relevant document. I can simply refer to my comments above. He did not develop this assertion nor put forward any other argument regarding this requirement. It follows that the appeal is dismissed as the respondent did not meet the definition of a relative set out in Annex 1 of Appendix EU to the Rules

Conclusions

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

I set aside the decision to be re-made.

I substitute a decision dismissing the appeal.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed: T Kamara

Date 6 April 2022

Upper Tribunal Judge Kamara

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: T Kamara

Date: 6 April 2022

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email