



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006363

First-tier Tribunal No: EA/01533/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 19 September 2023**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**WIRDA TARIQ
(Anonymity order not made)**

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the Respondent: The Sponsor, in person

Heard at Manchester Civil Justice Centre on 23 August 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeal of Ms Tariq against the respondent's decision to refuse her application for a EUSS Family Permit under the EU Settlement Scheme (EUSS) as the dependent child over the age of 21 of the EEA national sponsor.
2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms Tariq as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a national of Pakistan born on 5 January 1990. She is the daughter of the sponsor, Shafqat Mahmood Tariq, an Italian national born in Pakistan living in the UK with leave to remain under the EUSS. She applied on 5 August 2021, together with her mother Shamim Akhtar and sister Faseeha Mubeen, for an EUSS Family Permit to join the sponsor in the UK.

4. The respondent refused all three applications on the basis that she could not be satisfied that the applicants were family members of the relevant EEA citizen. That was because there was no marriage certificate produced as evidence of the appellant's mother's relationship to the sponsor as his spouse, no birth certificate produced as evidence of the appellant's sister's relationship to the sponsor as his child under the age of 21 years and no birth certificate produced as evidence of the appellant's relationship to the sponsor as his child over the age of 21 years. In addition, given that the third appellant was over the age of 21 years, there also needed to be evidence to show that she was dependent on the sponsor, but no such evidence had been produced.

5. The appellant, together with her mother and sister, appealed against the respondent's decisions, but did not elect to have an oral hearing. Instead they chose a papers determination of their appeal and produced further evidence for the appeal which included the appellant's mother's marriage certificate and her and her sister's birth certificates.

6. The appeals came before First-tier Tribunal Judge Clarke on 16 November 2022 to determine on the papers. In a decision promulgated on 23 November 2022, the judge accepted that the three appellants before him were the sponsor's wife and daughters and that they were therefore 'family members of a relevant EEA citizen'. He found that they were therefore entitled to EUSS family permits and he accordingly allowed the appeals.

7. The Secretary of State did not challenge the decisions in relation to the first two appellants, namely the appellant's mother and sister, but sought permission to appeal to the Upper Tribunal against the judge's decision in relation only to the third appellant, Wirda Tariq. That was on the grounds that the judge had overlooked the need to resolve the issue of the appellant's dependency upon the EEA national sponsor and had failed to make any findings in that regard.

8. Permission was granted by the First-tier Tribunal and the matter then came before me.

9. Prior to the hearing the appellant produced a copy of her passport and a letter from a doctor in Pakistan dated 8 August 2023. In that letter, the doctor confirmed that the appellant had been diagnosed with autism and was unable independently to manage her affairs and care for herself, that the absence of her immediate family members had had a profound impact on her emotional state and mental stability and that she was dependent upon her father and needed to be with her parents.

10. The sponsor, Mr Shafqat Mahmood Tariq, appeared before me at the hearing and was assisted by an interpreter in the Urdu language. He accepted that the letter from the doctor had been produced after the hearing before Judge Clarke and that there had been no evidence of dependency before the judge. It was accepted that Judge Clarke had therefore erred by allowing the appeal on the basis that the appellant was a family member of the EEA national sponsor without considering the question of dependency.

11. There was some discussion with Mr McVeety as to whether the decision had simply to be re-made by dismissing the appeal, with the appellant then being expected to make a fresh application to join her family in the UK on human rights grounds, or whether the Tribunal could consider the evidence of dependency and re-make the decision on that basis, either at this hearing or at a resumed hearing on another date.

12. Mr McVeety referred to Regulation 9(4) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 which stated that consideration could be given to any matter relevant to the substance of the decision appealed against, including a matter arising after the date of the decision. On that basis he accepted that additional evidence in relation to the issue of dependency could therefore be considered. Mr McVeety also accepted, on the basis of the evidence now produced, namely the doctor's letter, that the appellant had demonstrated that she was dependent upon the sponsor, and that the decision could be re-made by allowing the appeal on that basis, such that there was no need for a further hearing.

13. In the circumstances, and in light of Mr McVeety's concession, I accept that the appellant has shown that she is dependent upon her father and is therefore a dependent child over the age of 21 years and, as such, a family member of a relevant EEA citizen. Having set aside Judge Clarke's decision owing to his failure to consider the issue of dependency, I therefore re-make the decision by allowing the appellant's appeal on the grounds that the requirements have been met for an EUSS family permit.

Notice of Decision

14. The original Tribunal made an error of law and the decision is set aside. I re-make the decision by allowing the appellant's appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 on the grounds that the respondent's decision was not in accordance with Appendix EU (Family Permit) to the Immigration Rules.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 August 2023