



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-003647**  
**First-tier Tribunal No:**  
**EA/04079/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

Qerim Kadiu

**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr N Ahmed, legal representative, Evolent Law  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 15 March 2023**

**DECISION AND REASONS**

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Fenoughty promulgated on 29 June 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Chinweze on 20 July 2022.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant was issued with a EU Settlement Scheme Family Permit in Tirana, valid from 16 May 2021 until 16 November 2021. He entered the United Kingdom

on 4 September 2021 as a dependent parent of his son who is married to a Portuguese national.

5. On 9 September 2021, the appellant made an application under the EU Settlement Scheme. That application was refused on 31 March 2022. The reason for refusal was that the appellant had not provided any evidence that he was dependent upon his sponsor or their spouse or civil partner. The decision letter referred to numerous unsuccessful attempts having been made to contact the appellant by email, text, and telephone in order to ask for evidence of dependency.

#### The decision of the First-tier Tribunal

6. The hearing before the First-tier Tribunal was considered on the papers, at the appellant's request. The appeal was dismissed because the appellant had provided 'almost no evidence' of his dependency on his son and daughter-in-law and the judge found that he could not meet the requirements of the Immigration Rules.

#### The grounds of appeal

7. There was a single ground of appeal, that being that the First-tier Tribunal made a material misdirection in law in failing to appreciate that the appellant was not required to show dependency under Appendix EU. Reference was made to Annex 1 of Appendix EU in support of that contention.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the judge made a material error of law in finding that the appellant had not demonstrated sufficient evidence of dependency, when this was not a requirement of the relevant definition of a dependent parent set out in Annex 1 (a)(b) and (c) of Appendix EU.

9. The respondent filed a Rule 24 response dated 5 October 2022. In it, the appeal was opposed, with the following comments being made.

The grounds confuse two different appendices. Appendix EU (FP) which deals with entry to the UK and Appendix EU which deals with after entry, these are different appendices. Under appendix EU (FP) in applications before 1 July 2021 dependency was assumed. For in country applications under Appendix EU post 1 July 2021 dependency must be evidenced. Clearly references to status granted under one of the appendices refers only to status under that appendix not both, unless particularly specified. The judge at the First Tier was therefore correct to require evidence of dependency.

#### The hearing

10. I heard succinct submissions from both representatives. Mr Ahmed accepted that the contents of Appendix EU applied to the appellant given that he made an in-country application for pre-settled status. Notwithstanding this acceptance, during his submissions, he introduced a new ground of appeal regarding which permission had not previously been sought, let alone granted.
11. The new ground, which was unaccompanied by any written argument or authorities, was that the requirements of Appendix EU should be given a

purposive meaning, with reference to the following extract from Appendix EU (FP).

*FP2. This Appendix has effect in connection with the granting of entry clearance for the purposes of acquiring leave to enter or remain in the UK by virtue of Appendix EU to these Rules.*

12. Mr Ahmed's argument, which was difficult to follow, was that because Appendix EU (FP) permitted leave to enter to be granted without evidence of dependency before 1 July 2021, this should also apply to applications for pre-settled status under Appendix EU made after 1 July 2021. The date of 1 July 2021 being an artificial demarcation. He conceded that this argument was not made before the First-tier Tribunal. He further conceded that the matter raised in the pleaded grounds was not an argument which was before the judge.
13. Ms Everett argued that Appendix EU required dependency and the appellant had stated in his grounds of appeal against the decision under challenge that he would be submitting evidence. As no further evidence was forthcoming, the judge could not have come to any other decision. She urged me to resist Mr Ahmed's invitation to interpret Appendix EU differently. Ms Everett emphasised that the requirement for dependency was not waived but was assumed in out of country applications prior to 1 July 2021 and that the Rules were clear in that evidence was required in in-country applications after that date.
14. In reply, Mr Ahmed simply referred to "c(i)" of Appendix EU. Ms Everett interjected to suggest that Mr Ahmed was referring to the Rules for settled status applications. Mr Ahmed's reply was as follows, "it may well be, we say it also applies to pre-settled status."
15. At the end of the hearing, I upheld the decision of the First-tier Tribunal as it contained no material error of law.

#### Decision on error of law

16. The grounds of appeal referred to the following extract from Annex 1 to Appendix EU in relation to the definition of a dependent parent.
  - (c) this sub-paragraph applies (and the applicant therefore has to meet no requirement as to dependency) where the spouse, civil partner or durable partner of the applicant (and with whom they reside) has been granted:
    - (i) an entry clearance under this Appendix (my emphasis) in the form of an EU Settlement Scheme Family Permit as a dependent parent of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner, and that entry clearance has not been revoked or otherwise ceased to be valid;
17. Firstly, no argument was put in the grounds of appeal to the effect that the appellant was not required to show dependency. On the contrary, the grounds of appeal (which were drafted by Mr Ahmed on behalf of Evolent Law) baldly stated that the decision was not in accordance with the EUSS and that 'the appellant will provided (sic) further oral and documentary evidence at his appeal hearing.' As indicated earlier, the appellant did not request an oral hearing and he submitted no further evidence. It follows, that the judge cannot be criticised for failing to consider an argument which was never put.

18. In any event, there is no substance to the sole ground of appeal. The extract in question states that no evidence of dependency is required if an applicant has been granted leave to enter or remain under “this Appendix.” The appellant was granted leave to remain following an application under Appendix EU (FP) not Appendix EU. Mr Ahmed’s submissions lacked substance and referred to no authority to support his contention that “this Appendix” could apply to Appendix EU (FP) or indeed any other Appendix.
19. The attempt made by Mr Ahmed to amend his grounds, to widen the scope of the definition of parent in Appendix EU, without permission, is unwelcome. Permission is refused in relation to this matter. In any event, his submissions in this regard were equally hollow.
20. The appellant declined to provide any evidence to show that he was dependent upon his sponsor, either to the respondent or to the First-tier Tribunal. Those facts combined with the absence of any argument to suggest that dependency on the sponsor was not a valid requirement of the Rules, the judge was unarguably entitled to dismiss the appeal for the reasons given. There was no error in the judge’s approach.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal is upheld.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**15 March 2023**

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### **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.**