



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002256
(EA/14206/2021)**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On 17 October 2022**

**Decision & Reasons Promulgated
On the 25 January 2023**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

**Jing Xuan Liu
(no order for anonymity)**

Respondent

**For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: No Appearance**

DECISION AND REASONS

1. The Respondent is a national of China. On the 15th March 2022 the First-tier Tribunal (Judge RA Pickering) allowed his appeal under the Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020. The Secretary of State now has permission to appeal against that decision.

Background and Matters in Issue

2. The Respondent is a 9 year old boy who was born in Leeds on the 27th May 2013 and has lived in the United Kingdom ever since. He lives with his sister Ms Jing Ya Liu, who is a citizen of the Republic of Ireland. In findings unchallenged before me Judge Pickering found that he is dependent upon his sister, and shares her household.
3. The matter in issue between the parties is whether the Respondent qualifies for indefinite leave to remain, or alternatively pre-settled status under the European Union Settlement Scheme.
4. The Respondent made his application under the scheme on the 25th May 2021. It was refused by the Secretary of State on the 15th September 2021. The letter explained that he could not qualify any leave under Appendix EU of the Immigration Rules because he did not have a 'relevant document' issued under the Immigration (European Economic Area) Regulations 2016. A 'relevant document' is defined at Annex 1 of Appendix EU as follows:

(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; or
5. Before Judge Pickering the Respondent produced a residence permit issued to him by the Secretary of State on the 21st February 2019 and valid until the 8th August 2021. Judge Pickering found, at paragraph 19 of her decision that this was a 'relevant document' for the purpose of Appendix EU, and allowed the appeal.
6. The Secretary of State now appeals on the ground that Judge Pickering erred in law in that she based her decision on an error of fact. The residence permit shown to Judge Pickering was not a 'relevant document' as defined above, since it was not issued under the Immigration (European Economic Area) Regulations 2016. It was a residence permit reflecting a grant of limited leave to remain made on 'discretionary leave/humanitarian protection' grounds.
7. The Respondent's representatives have made written submissions in this matter, received by myself and Mr Diwnycz. Although they make various points about why their lay client's appeal should ultimately succeed, they do not dispute the central premise of the grounds, namely that the card relied upon by Judge Pickering was not issued under the Immigration (European Economic Area) Regulations 2016. It does not therefore count as a 'relevant

document' for the purpose of the scheme. On that basis the Secretary of State's appeal must succeed.

8. I am satisfied that the appeal below was allowed on the basis of an error of fact. It follows that the decision needs to be remade.

Decisions and Directions

9. The decision of the First-tier Tribunal is set aside.
10. The decision in the appeal is to be remade in the First-tier Tribunal by a Judge other than Pickering.
11. There is no order for anonymity.

Upper Tribunal Judge Bruce
27th December 2022