



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

Appeal Number: UI-2022-001734  
[EA/10841/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 September 2022**

**Decision & Reasons Promulgated  
On 1 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS  
DEPUTY UPPER TRIBUNAL JUDGE COTTON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EMMANUEL SAKYI**  
(no anonymity direction)

Respondent

**Representation:**

For the Appellant: Ms A Nolan, Senior Home Office Presenting Officer

For the Respondent: Mr S Vokes, Counsel instructed by M & K Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against the decision of the Secretary of State to refuse his application for leave to remain in the United Kingdom as a family member (in this case a dependent relative) under Appendix EU of the Immigration Rules.
2. The Secretary of State’s reasons for refusing the application are set out in a letter dated 21 May 2021. The letter indicated that the claimant did not

meet the requirements of Appendix EU of the Immigration Rules and various reasons are given. Of particular importance is the paragraph that asserts:

“You state that you are a nephew and dependent relative of Kofi Anin-Adjei a relevant EEA Regulations citizen. However, you have not provided sufficient evidence to confirm this. The reasons for this are explained below.”

3. The explanation below is that the “required evidence” ... “is a valid family permit or residence card issued under the EEA Regulations” ... and the Home Office records indicated that he had not been issued with a family permit or residence card and that he had not provided the relevant document.
4. The appeal came before the First-tier Tribunal on 13 January 2022. Mr Vokes appeared for the claimant and Mr T Malcolm was the Home Office Presenting Officer. Mr Vokes, who is certainly an experienced immigration practitioner, told us that it was the first case he had presented under Appendix EU of the Immigration Rules and that Mr Malcolm and the First-tier Tribunal Judge each indicated that it was their first too.
5. It is apparent from the judge’s Decision and Reasons that the representatives discussed the appeal. There is every reason for there to be such discussions. There is no benefit in proving strictly matters that are capable of being agreed and much court time is saved by conversations of the kind that Mr Vokes described.
6. At paragraph 17 of the Decision and Reasons the First-tier Tribunal Judge said:

“At the beginning of the hearing, Mr Malcolm confirmed that it was accepted by the Respondent [Secretary of State] that the DNA evidence proved the relationship between the [claimant] and sponsor. It was therefore agreed that the only issue left for me to determine was whether the [claimant] was dependent on the sponsor at the date of the application.”
7. Paragraph 18 notes that Mr Vokes accepted that the claimant could not meet the eligibility criteria for indefinite leave to remain for settled status under EU11 and it was the claimant’s case that he did satisfy the criteria for limited leave to remain as a dependent relative family member under EU14.
8. The First-tier Tribunal Judge then decided that dependency was established. This finding is not challenged. Having made that finding the judge said at paragraph 36:

“Accordingly, I allow the appeal.”
9. The grounds of appeal to the Upper Tribunal essentially make one point. The grounds assert that the First-tier Tribunal Judge “embarked on an assessment of the ancillary question of whether the [claimant] could be regarded as dependent upon her sponsor” but this was not sufficient because, in order to succeed in the appeal, it was necessary to show that the residence had been “facilitated” by a relevant document and the absence of the relevant document was, he submitted, an insurmountable barrier in the way of allowing the appeal.

10. The Secretary of State's grounds were dated 8 February 2022. Since then the importance of the relevant document has been emphasised, for example, in the decision of this Tribunal in **Celik v SSHD [2022] UKUT 220 (IAC)**. In February, although the meaning of the Regulations was there to read there was little or no jurisprudence to reveal the correct approach which was not obvious.
11. Mr Vokes opposed the appeal because the judge had determined what the parties agreed he had to determine and, he submitted, it cannot be an error of law to follow the approach that both parties agreed should be followed.
12. Ms Nolan felt the weight of that but submitted that the Decision and Reasons was based on the refusal letter and the refusal letter was perfectly clear. The point was raised and should have been determined.
13. Mr Vokes also made plain that if we were persuaded by Ms Nolan's arguments then we have to set aside the decision of the First-tier Tribunal and dismiss the appeal. He was careful not to suggest that the claimant would be able to show that he did have the necessary documentation. It was his case that he was excused that need by reason of the parties' agreement.
14. We have no doubt that there was an agreement of the kind Mr Vokes explained. Not only would we expect Mr Vokes to think carefully before making such an assertion but the agreement is reflected on the face of the First-tier Tribunal's Decision and the Secretary of State's grounds adopt the somewhat restrained suggestion that the judge's decision to limit his consideration to dependency was taken "perhaps with some acquiescence from the Presenting Officer".
15. We are entirely satisfied it was the approach taken with the overt encouragement of the Presenting Officer through an agreement reached with Mr Vokes.
16. We are also satisfied that it is of no assistance to the claimant. It is trite law that parties can agree facts but they cannot agree law. Clearly it is desirable where the parties have agreed facts that such agreements bind everyone but it is not the parties' place to agree, and so determine, the law. The parties can of course agree the law between themselves but that does not bind the judge.
17. There may be occasions when a judge's departure from what was agreed by the parties leads to unfairness and a judge desiring to depart may need to put the parties on notice and give time but this is not that kind of case. We are satisfied that the agreement between the Presenting Officer and Mr Vokes, properly understood, was not an agreement that the claimant had the necessary documentation (he clearly does not) but that he did not need the necessary documentation. The law requires that he does and the agreement has no effect.
18. We are entirely satisfied that this decision of the First-tier Tribunal was the result of a mistake made by the parties and the judge at a time when there was very little understanding about the practical operation of these

Rules. However, it was, on its proper understanding, a mistake of law, which we have to put right. The First-tier Tribunal did not do its job simply by looking at dependency. It also had to look for the necessary documentation. It erred in law and we set aside its decision.

19. Mindful of Mr Vokes' entirely appropriate and realistic approach we must now dismiss the appeal of the claimant against the Secretary of State's decision by substituting a decision to that effect.
20. We realise that from the claimant's point of view this is a very unwelcome decision. He thought that he had "won" but he only thought that he had won because of a misunderstanding by the parties that was followed, wrongly, by the judge. It is not a misunderstanding that binds anyone. He is no worse a position now than he would have been in if the point had been appreciated when the mistake was made in January.

### **Notice of Decision**

21. For the avoidance of doubt, we find the First-tier Tribunal erred in law. We set aside its decision and we substitute a decision dismissing the claimant's appeal against the decision of the Secretary of State.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 22 September 2022