



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

Case No: UI-2023-000267  
First-tier Tribunal No: EA/50653/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 29 May 2023**

**Before:**

**UPPER TRIBUNAL JUDGE GILL**

**Between**

**Simon Doda**  
**(ANONYMITY ORDER NOT MADE)**

**Appellant**

**And**

**The Secretary of State for the Home**  
**Department**

**Respondent**

**Representation:**

For the Appellant:

Mr J Gajjar, instructed by EcoM Solicitors.

For the Respondent:

Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 26 April 2023

**DECISION AND REASONS**

1. The appellant, a national of Albania born on 14 December 1990, appeals against a decision of Judge of the First-tier Tribunal Beach (hereafter the “judge”) by which she dismissed his appeal against a decision of the respondent of 9 March 2021 which refused his application of 30 December 2020 for a residence card to confirm his status as an extended family member of Ms Aikaterini Bitsakou (hereafter the “sponsor”), an EEA National exercising Treaty rights in the United Kingdom.
2. The judge found, inter alia, that the appellant and the sponsor were in a durable relationship at the time of the application and that they continue to be in a genuine, subsisting and durable relationship as at the time of the hearing (para 18), for the reasons that she gave at paras 12-17 of her decision.
3. The judge also found that it was more likely than not that the sponsor was exercising her Treaty rights in the tax year 2020/2021 (para 23).
4. The judge then went on to consider whether the sponsor continued to exercise Treaty Rights after 31 December 2020. She was not satisfied that it had been shown that the sponsor “*was and is exercising her Treaty Rights in the UK at all material times*” (para 25).
5. There are three grounds. Ground 1 is that the judge erred in law in considering whether the sponsor continued to exercise Treaty Rights after 31 December 2020 because it was not

legally possible to exercise Treaty Rights after 31 December 2020. Ground 1 contends that the judge's finding that the sponsor was exercising Treaty Rights in the United Kingdom in the 2020/2021 tax year was sufficient for her to have allowed the appellant's appeal.

6. At the hearing, Mr Wain accepted that ground 1 was established, that the judge should not have gone on to consider whether the sponsor continued to exercise Treaty Rights after 31 December 2020, and dismiss the appeal on that basis. I was requested therefore to set aside the judge's decision and re-make the decision on the appeal on the evidence before me, i.e. by allowing the appeal against the Secretary of State's decision.
7. I entirely agree that ground 1 is established, for the reasons given above. I also agree that the judge materially erred in law in proceeding to consider whether the sponsor continued to exercise Treaty Rights after 31 December 2020 and that she should have allowed the appeal given her finding that the sponsor was exercising Treaty Rights in the 2020/2021 tax year.
8. It is therefore unnecessary for me to consider grounds 2 and 3.
9. For the reasons given above, I set aside the decision of the judge to dismiss the appeal. I proceed to re-make the decision on the appeal by allowing the appellant's appeal against the Secretary of State's decision.

### **Decision**

The making of the decision of the First-tier Tribunal involved the making of an error of law sufficient to require it to be set aside.

Accordingly, the decision of the First-tier Tribunal to dismiss the appellant's appeal against the respondent decision is set aside.

I re-make the decision on the appellant's appeal against the Secretary of State's decision by allowing it.

Signed  
Upper Tribunal Judge Gill

Date: 26 April 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