



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

**Case No: UI-2023-002624**  
**First-tier Tribunal No:**  
**EA/01067/2022**

**THE IMMIGRATION ACTS**

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

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**  
**DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**DRITAN HOXHA**  
(no anonymity order made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Q Ahmed, Counsel, instructed by Roli Solicitors  
For the Respondent: Mr P Deller, Senior Case Worker

**Heard at Field House on 11 September 2023**

**DECISION AND REASONS**

extempore

1. This is an appeal by a citizen of Albania against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State on 17 June 2021 to refuse his application under the EU Settlement Scheme. The appellant said that his adult son was lawfully in the United Kingdom and the appellant was entitled to join him under the terms of the Scheme. The Secretary of State was not satisfied that the sponsor was resident in the United Kingdom at the material time.
2. Before the First-tier Tribunal the Secretary of State was not represented and the appellant was represented by his sponsor. The judge was satisfied that the sponsor was resident at the necessary time. The language is slightly confusing and ends with a double negative but the Judge said at paragraph 14:  
  
"In summary on this point and on a balance of probabilities I do not find that the sponsor was not resident in the UK at the date of the application of the appellant".

3. The respondent could have played semantic games but Mr Deller is above that and accepted that this was, essentially, a finding that the sponsor was resident at the material time.
4. The judge did not allow the appeal. The main reason for not allowing the appeal was that he was not satisfied about dependency. Alarm bells should have rung because the point was not taken by the Secretary of State. Judges are entitled to take points not raised in the papers but they have a duty to be fair and it is very hard to see how the judge was acting fairly by taking the point without giving anybody an opportunity to address it but the problem here is that there was no need to show dependency. As Mr Deller has explained, the terms of Appendix EU (Family permit) did not, in most cases, require the dependent parent to show dependency on the basis that it is to be assumed (unless the EEA citizen sponsor is under 18 which he was not in this case - the sponsor was 23 at the time of the application on 17/06/2021). It follows therefore that on the judge's findings the judge should have allowed the appeal.
5. We are particularly grateful to Mr Deller for explaining the matter to us and setting out the Secretary of State's position which is to agree with the decision we are making.
6. **Notice of Decision**
7. We find the First-tier Tribunal erred in law. We set aside its decision and we re-make the decision allowing the appellant's appeal against the Secretary of State's decision.

**Jonathan Perkins**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated 21 September 2023**