



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

Case No: UI-2023-005431

First-tier Tribunal No: EA/04309/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

31<sup>st</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Victor Alfonso Morillo Gonzalez  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Shea, Counsel

For the Respondent: Ms S McKenzie, Home Office Presenting Officer

**Heard at Field House on 26 January 2024**

**DECISION AND REASONS**

**Introduction**

1. The appellant, who is a citizen of (and lives in) the Dominican Republic, applied on 15 June 2021 for an EU Settlement Scheme Family Permit under Appendix EU (Family Permit) of the Immigration Rules in order to join his aunt (“the sponsor”) in the UK. The appellant’s aunt is a citizen of Romania, who has pre-settled status.
2. On 14 March 2022 the application was refused by the respondent. The appellant appealed to the First-tier Tribunal. His appeal came before Judge of the First-tier Tribunal Munonyedi. In a decision promulgated on 29 March 2023 the judge dismissed the appeal. The appellant is now appealing against that decision.

### **The respondent's decision refusing the appellant's application for a family permit**

3. In a short decision, the respondent refused the appellant's application for a family permit on the basis that he was not a "family member of a relevant EEA citizen", as that term is defined in Appendix EU (Family Permit).

### **The applicable law**

4. The appellant applied for a family permit from outside the UK and therefore the applicable Rules are those in Appendix EU (Family Permit).
5. In order to meet the eligibility requirements for entry clearance under Appendix EU (Family Permit) the appellant needed, amongst other things, to be a "family member of a relevant EEA citizen". This term is defined in Annex 1 to Appendix EU Family Permit. The following categories of person fall within that definition: spouses, civil partners, durable partners, children and dependent parents. Nephews and nieces are not categories within the definition.

### **Decision of the First-tier Tribunal**

6. After setting out and summarising several parts of Appendix EU, the judge found that the appellant was not a family member or dependent relative of the sponsor because he had not been issued with a relevant document confirming this. The judge also found that the application was made after the specified date of 31 December 2020.
7. The judge then proceeded to find that the sponsor's ability to exercise free movement is not affected by the appellant being refused entry and that there was no jurisdiction to consider Article 8.

### **The grounds of appeal**

8. The grounds argue that the judge erred because he accepted that the sponsor and her husband provide financially for the appellant and submit that because of this the appellant falls within the Citizens' Directive 3.2(a) and accordingly the requirements in Appendix EU are met.
9. Permission to appeal was granted on the basis that arguably there was no requirement for the appellant to have a relevant document.

### **Submissions**

10. Mr Shea argued that the requirements of Appendix EU are met because the appellant is dependent on his aunt and uncle in the UK and there is no need for the appellant to have a relevant document.
11. I put to Mr Shea that I could not see why Appendix EU was relevant, given that this was an application from outside the UK for a family permit, where Appendix EU (Family Permit) applies. His response was that Appendix EU applies in all cases concerning the EU Settlement Scheme and it is necessary to consider the matter under Appendix EU.
12. Ms McKenzie's argument, in short, was that the Appendix EU (Family Permit) applies and the judge applied the wrong Rules.

### **Error of Law**

13. The decision of the First-tier Tribunal is undermined by a fundamental error, which is that the wrong Appendix to the Immigration Rules was applied. This was an application by a person residing outside the UK for a Family Permit and therefore the applicable Immigration Rules are those set out in Appendix EU (Family Permit). Applying Appendix EU instead of Appendix EU (Family Permit) resulted in the judge considering the wrong definitions and reaching an unsustainable conclusion. For this reason, I set aside the decision of the First-tier Tribunal.

### **Remade Decision**

14. Under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, there are two grounds of appeal available to the appellant. In broad terms, these are that (i) the respondent's decision breaches his rights under the EU Withdrawal Agreement; and (ii) the decision is not in accordance with the relevant Immigration Rules.
15. The appellant cannot rely on the EU Withdrawal Agreement because he falls outside of its scope. As is made clear in *Batool and others (other family member: EU exit)* [2022] UKUT 00219(IAC), a person, such as the appellant, who potentially would have fallen into the category of an extended family member under the now revoked 2016 EEA Regulations, can only fall within the scope of the EU Withdrawal Agreement if he applied for facilitation of entry and residence before 31 December 2020. As the appellant did not do this, he has no rights under the EU Withdrawal Agreement.
16. The appellant's argument that the decision is not in accordance with the relevant Immigration Rules is not viable for the simple reason that, as the nephew of an EEA citizen, he does not fall within the definition of a family member of a relevant EEA citizen, as that term is defined in Annex 1 to Appendix EU (Family Permit). This is plain from the wording of the definition, and is confirmed in *Batool*. See paragraphs 60 and 65 of *Batool*.

### **Notice of Decision**

17. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
18. I remake the decision and dismiss the appeal.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**30 January 2024**