



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

Case No: UI-2023-005613

First-tier Tribunal No: EA/04977/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 23 December 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**Collins IDEHEN**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes of Counsel instructed by Equity Law Chambers  
For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer

**Heard at Field House on 4 September 2024**

**DECISION AND REASONS**

1. This is an appeal against a decision of First Tier Tribunal Judge Meyler promulgated on 11 October 2022 dismissing the Appellant's appeal against a decision of the Respondent dated 11 May 2022 refusing an application under the EU Settlement Scheme made on 7 April 2022.
2. The Appellant is a citizen of Nigeria born on 13 February 1990. He entered the United Kingdom on 6 February 2022 further to an EUSS Family Permit, seemingly granted on the basis of being an extended family member. On 7 April 2022 he made an application for pre-settled status under the EUSS. The Appellant's entry to the UK, and his subsequent application, were based on his relationship to his sister Adesuwa Idehen (date of birth 15 March 1976), a citizen of Italy.
3. The primary reasoning set out in the Respondent's decision letter of 11 May 2022 is that the Appellant is not a 'dependent relative of a relevant

sponsor', such a conclusion resting on the fact that the definition of a 'joining family member of a relevant sponsor' in Annex 1 to Appendix EU requires a relationship of spouse, civil partner, durable partner, child, grandchild or great grandchild, or dependent parent, grandparent or great grandparent - and thereby does not include a sibling.

4. I pause to note that whilst the Appellant's application form of 7 April 2022 was not included in the Respondent's bundle, the documents did include, amongst other things, a copy of the EUSS Family Permit vignette in the Appellant's passport, together with an entry stamp dated 6 February 2022. The Appellant's Skeleton Argument before the First-tier Tribunal also specified the history: "*On 07.04.2022, the Appellant applied for a Pre-Settled Status Application of an EEA National as he was initially granted a Family Permit as an extended family member of an EEA National*" (ASA at paragraph 2). The First-tier Tribunal Judge references this history at paragraphs 6-8 of the Decision.
5. Although the Appellant had filed evidence in the appeal, including a witness statement dated 1 August 2022, and a witness statement of the same date from his sister, there was no attendance by or on behalf of the Appellant before the First-tier Tribunal at the hearing listed on 15 September 2022 in Manchester. Nor was there any attendance by the Respondent.
6. In the circumstances the First-tier Tribunal essentially proceeded to determine the appeal on the papers. In this context it is commented at paragraph 4 of the Decision: "*The appellant failed to appear before the Tribunal and no message was received for or on behalf of the appellant.*"
7. The 'reasoning' part of the Decision of the First-tier Tribunal is at paragraphs 12-16. The Judge in substance upheld the decision of the Respondent.
8. The Appellant applied for permission to appeal to the Upper Tribunal.
9. Permission was granted on 28 December 2022 for the following reasons:
  2. *It is arguable that the appellant was not notified of the hearing, the Judge arguably did not satisfy herself that the appellant had been notified of the hearing.*
  3. *It is further arguable that the Judge erred in considering the appellant as a 'joining family member' in circumstances where he had been granted an EUSS Family Permit therefore arguably he was a 'dependant relative' who had a 'relevant document'.*
10. Whilst the Decision of the First-tier Tribunal refers to there being no message received from or on behalf of the Appellant, there is no reference to the Judge having checked that there was due service of the Notice of Hearing. Unusually, I do not have access to the full file in this appeal: as such I am not able to ascertain whether service did or did not take effect

as required. However, it is to be noted that the Respondent has indicated concession on this issue: in the absence of the Respondent being able to identify any document confirming due service of the Notice of Hearing, it is the Respondent's position that the Appellant should be accorded the benefit of the doubt and his assertion in this regard be accepted. As such, it is the Respondent's position that the decision of the First-tier Tribunal should be set aside and the Appellant afforded a fresh oral hearing.

11. Understandably Mr Holmes, on part of the Appellant, did not seek to contest the Respondent's concession.
12. In my judgement there is no reason for me not to accept the Respondent's concession in this regard.
13. As regards forum, in circumstances where the Appellant has in substance been denied the opportunity of putting his case to the First-tier Tribunal in person, it seems to me that it is entirely appropriate that the appeal be remitted to the First-tier Tribunal so that the Appellant may have the opportunity to put his case in person, and also so that any further appeal rights are preserved/protected.
14. Notwithstanding the Respondent's concession, and the essential agreement of the parties that the decision in the appeal required to be remade in due course, there was some scope for discussion of the issues in the appeal.
15. In particular, further to my enquiry of the history of the grant of the Family Permit, Ms Nwachuku was able to identify that the Appellant had been issued with a Family Permit pursuant to an appeal allowed on 3 August 2021 under the Immigration (European Economic Area) Regulations 2016. Moreover, she was able to identify that the application for the Family Permit had been made on 19 January 2020. Necessarily, this would mean that the Appellant had applied for facility of entry before 11.00pm on 31 December 2020: this position is to be compared with the observations of the First-tier Tribunal at paragraph 13 with reference to **Batool and others (other family members: EU exit) [2022] UKUT 00219 (IAC)**, and contrasted with the Judge's observation at paragraph 14 - "*There is no basis for me to find that the appellant applied for facilitation of entry and residence before the end of the transition period*".
16. In all such circumstances it seems to me that it is incumbent upon the parties to use their best endeavours to file and serve any materials demonstrating the history of the Appellant being issued with a Family Permit. Indeed, it may well be that the Respondent will wish to review her decision in light of the information revealed by Ms Nwachuku.
17. Mr Holmes also informed me that the initial application had involved both the Appellant and his mother, and that his mother had succeeded: he suggested that there might be an EUSS concessionary policy applicable to the Appellant's case. No such policy document was placed before me, and in circumstances where the case is to be returned to the First-tier Tribunal

it is unnecessary for me to make any further comment in this regard. If there is any such policy it will be for the parties to place it before the First-tier Tribunal and advance any submissions accordingly.

18. I do not propose to make any specific Directions: the parties essentially know what is required of them; in any specific Directions are required they may be made by the First-tier Tribunal in due course.

### **Notice of Decision**

19. The decision of the First-tier Tribunal contained an error of law and is set aside.
20. The decision in the appeal is to be remade before the First-tier Tribunal before any Judge other than First-tier Tribunal Judge Meyler, with all issues at large.

**I. Lewis**  
Deputy Judge of the Upper Tribunal  
(Immigration and Asylum Chamber)  
**10 December 2024**