



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

**Appeal Numbers:
UI-2022-004015 (EA/02175/2022)
UI-2022-004017 (EA/02176/2022)**

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2022**

**Decision & Reasons
Promulgated
On 28 February 2023**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

ENTRY CLEARANCE OFFICER

Appellant

And

**ABEDIN PEPOSHI
HIDE PEPOSHI
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation

For the Appellant: Ms Cunha, Senior Home Office Presenting Officer
For the Respondents: Unrepresented

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, for convenience I will refer to the parties as they were designated in the First-tier Tribunal. The appellants are not represented. I permitted their son and daughter-in-law, who attended the hearing, to speak on their behalf.

2. The appellants are Albanian nationals living in Albania. Their son (“Mr P”) lives in the UK and has pre-settled status under the EU Settlement Scheme, which was granted on 23 November 2020. In July 2021 Mr P married an EEA national (“Ms P”).
3. In September 2021 the appellants applied for an EU Settlement Scheme Family Permit in order to join Mr P (and Ms P) in the UK. In January 2022 the application was refused. The appellants appealed and their appeal came before Judge of the First-tier Tribunal Cotton (“the judge”). In a decision promulgated on 21 July 2022 the judge allowed the appeal. The respondent is now appealing against that decision.

Relevant Provisions of Appendix EU (Family Permit)

4. As this case turns on the interpretation of paragraph FFP6(1) (and several definitions within Annex 1) of Appendix EU (Family Permit), I have set out the relevant parts of Appendix EU (Family Permit).
5. The appellants are entitled to entry clearance in the form of an EU Settlement Scheme Family Permit if they are meet the eligibility requirements in paragraph FP6(1) of Appendix EU (Family Permit). FP6(1) provides:

FP6. (1) The applicant meets the eligibility requirements for an entry clearance to be granted under this Appendix in the form of an EU Settlement Scheme Family Permit, where the entry clearance officer is satisfied that at the date of application:

- (a) The applicant is not a British citizen;
- (b) The applicant is a family member of a relevant EEA citizen;
- (c) The relevant EEA citizen is resident in the UK or will be travelling to the UK with the applicant within six months of the date of application;
- (d) The applicant will be accompanying the relevant EEA citizen to the UK (or joining them in the UK) within six months of the date of application; and
- (e) The applicant (“A”) is not the spouse, civil partner or durable partner of a relevant EEA citizen (“B”) where a spouse, civil partner or durable partner of A or B has been granted an entry clearance under this Appendix, immediately before or since the specified date held a valid document in that capacity issued under the EEA Regulations or has been granted leave to enter or remain in the UK in that capacity under or outside the Immigration Rules.

6. “Family member of a relevant EEA citizen” is a term which is defined in Annex 1 to Appendix EU (Family Permit). The definition is lengthy

and not all of it is relevant to these proceedings. The relevant part is subparagraph (e), which concerns dependent parents of a spouse of a relevant EEA citizen. This provision provides:

(e) the child or dependent parent of the spouse or civil partner of a relevant EEA citizen, as described in subparagraph (a) above, and:

(i) the family relationship of the child or dependent parent to the spouse or civil partner existed before the specified date (unless, in the case of a child, the person was born after that date, was adopted after that date in accordance with a relevant adoption decision or after that date became a child within the meaning of that entry in this table on the basis of one of sub-paragraphs (a) (iii) to (a)(xi) of that entry); and

(ii) all the family relationships continue to exist at the date of application

7. There is a reference in subparagraph (e) to subparagraph (a), which is the subparagraph concerning spouses and civil partners of EEA citizens. It provides:

(a) the spouse or civil partner of a relevant EEA citizen, and:

(i) (aa) the marriage was contracted or the civil partnership was formed before the specified date; or

(bb) the applicant was the durable partner of the relevant EEA citizen before the specified date (the definition of 'durable partner' in this table being met before that date rather than at the date of application) and the partnership remained durable at the specified date; and

(ii) the marriage or civil partnership continues to exist at the date of application;

8. "Relevant EEA citizen" is also a term that is defined in Annex 1 to Appendix EU (Family Permit). It is not necessary to set this definition out because it was common ground that Ms P falls within the definition of a relevant EEA citizen.

9. Within subparagraph (a) there is a reference to "durable partner". This is defined in Annex 1 to Appendix EU (Family Permit) as:

(a) the applicant is, or (as the case may be) was, in a durable relationship with the relevant EEA citizen (or, as the case may be, with the qualifying British citizen), with the couple having lived together in a relationship akin to a marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship); and

(b) where the applicant was resident in the UK and Islands as the durable partner of a relevant EEA citizen before the specified date,

the applicant held a relevant document as the durable partner of the relevant EEA citizen or, where there is evidence which satisfies the entry clearance officer that the applicant was otherwise lawfully resident in the UK and Islands for the relevant period before the specified date (or where the applicant is a joining family member) or where the applicant relies on the relevant EEA citizen being a relevant person of Northern Ireland, there is evidence which satisfies the entry clearance officer that the durable partnership was formed and was durable before the specified date; and

(c) it is, or (as the case may be) was, not a durable partnership of convenience; and

(d) neither party has, or (as the case may be) had, another durable partner, a spouse or a civil partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person's relationship with that party

10. Another term used in subparagraph (e) that is defined in Annex 1 to Appendix EU (Family Permit) is "dependent parent". This is defined as:

(a) the direct relative in the ascending line of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; and

(b) (unless sub-paragraph (c) immediately below applies):

(i) dependent on the relevant EEA citizen or on their spouse or civil partner:

(aa) (where sub-paragraph (b)(i)(bb) or (b)(i)(cc) below does not apply) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed; or

(bb) (where the date of application is after the specified date and where the applicant is not a joining family member) at the specified date, and (unless the relevant EEA citizen was under the age of 18 years at the specified date) that dependency is assumed; or

(cc) (where the date of application is after the specified date and where the applicant is a joining family member) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed where the date of application is before 1 July 2021; or

(ii) dependent on the qualifying British citizen (or on their spouse or civil partner) at the date of application or, where the date of application is after the specified date, at the specified date, and (unless the qualifying British citizen is under the age of 18 years at the date of application or, where the date of application is

after the specified date, the qualifying British citizen was under the age of 18 years at the specified date) that dependency is assumed; and

(c) this sub-paragraph applies (and the applicant therefore has to meet no requirement as to dependency) where the spouse, civil partner or durable partner of the applicant (and with whom they reside) has been granted:

(i) an entry clearance under this Appendix in the form of an EU Settlement Scheme Family Permit as a dependent parent of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner, and that entry clearance has not been revoked or otherwise ceased to be valid; or

(ii) indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU to these Rules as a dependent parent of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen or of the relevant sponsor) or of their spouse or civil partner, and that indefinite or limited leave has not lapsed or been cancelled, curtailed, revoked or invalidated

‘dependent’ means here that:

(a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner; and

(b) such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) or by their spouse or civil partner; and

(c) there is no need to determine the reasons for that dependence or for the recourse to that support

in addition:

(a) ‘direct relative in the ascending line’ includes:

(i) a grandparent or great-grandparent; and

(ii) an adoptive parent of an adopted child; and

(b) ‘spouse or civil partner’ means (as the case may be) the person described in sub-paragraph (a)(i) or (a)(ii) of the entry for ‘family member of a qualifying British citizen’ in this table or in sub-paragraph (a) of the entry for ‘family member of a relevant EEA citizen’ in this table; and

(c) in respect of the reference in the first sub-paragraph (c) in this entry to the spouse, civil partner or durable partner of the applicant,

the entry for (as the case may be) 'spouse', 'civil partner' or 'durable partner' in this table applies, except that in the applicable entry 'applicant' is to be substituted for 'relevant EEA citizen'

11. A term used in several of the defined terms above is "the specified date". This is 31 December 2020.

Decision of the First-tier Tribunal

12. The judge made the following findings of fact:
- a. Mr P and Ms P met in January 2020 and began cohabiting in September 2020. Although they had been living together for less than three months on 31 December 2020, there was significant evidence of a durable relationship by that date.
 - b. Mr P and Ms P married in July 2021 and are (and have been) in a genuine and subsisting relationship.
 - c. The appellants are dependent on Mr P (using the money he sends them for rent, food and medical expenses).
 - d. Prior to obtaining pre-settled status on 23 November 2020 Mr P was in the UK lawfully, holding a residence card under the (now revoked) 2016 EEA Regulations (obtained as a consequence of his relationship with his former wife).
13. The judge directed himself that the appellants needed to establish that they satisfied the conditions of paragraph FP6(1) of Appendix EU (Family Permit). The judge found that the conditions of FP6(1) were met because:
- a. The appellants are in Mr P's direct ascending line and are dependent on him.
 - b. Mr P is Mrs P's spouse for the purposes of FP6(1). The judge directed himself that as the marriage between Mr P and Mrs P occurred after 31 December 2020 the appellants needed to show that (i) Mr P was Mrs P's durable partner, as defined in Annex 1, prior to that date. The judge found that although Mr and Mrs P had not lived together for two years by 31 December 2020 there was "other significant evidence" of the durable relationship and therefore a durable relationship was established.
 - c. Mr P had a residence card issued under the EEA Regulations prior to (for several years) 31 December 2020.

The Grounds of Appeal

14. There are three grounds of appeal.

15. In the first ground, it is argued that the judge erred by finding that Mr P was a spouse of an EEA national because in order for him to be a spouse, as defined, the marriage would need to have taken place before 11 PM on 31 December 2020.
16. It is also submitted that the appellants could not establish that Mr P was a “durable partner” because he never had a “relevant document” on the basis of his relationship with Ms P, which would be necessary for him to fall within the definition of a durable partner. It is noted in the grounds that Mr P’s residence card related to his ex-wife, not Ms P.
17. The second ground submits that as Mr P is not a “spouse” as defined, it would be necessary to establish that the appellants are in the ascending line of Ms P, which they are not.
18. The third ground submits that the judge failed to establish how Ms P (as opposed to Mr P) was providing support to the appellants. This is said to be necessary because Mr P was not a spouse, as defined.

Analysis

19. The core of the respondent’s case, as set out in the grounds (and as advanced by Ms Cunha at the hearing) rests on the understanding that Mr P is not a “spouse” of Ms P for the purposes of Appendix EU (Family Permit) because their marriage was entered into after 31 December 2020. However, the term spouse in the definition of “family member of a relevant EEA citizen” does not restrict the definition of spouse in the way the respondent contends. To be a spouse it is necessary to show (i) that a person is a spouse (subparagraph (a)) **and** that either the marriage was contracted before 31 December 2020 (subparagraph (i)(aa)) **or** that the person in question was a durable partner (as defined) prior to and on 31 December 2020 (subparagraph (i)(bb)). There is therefore a route open to the appellants even though Mr P was married after 31 December 2020, which is that set out in subparagraph (i)(bb): i.e. Mr P was a durable partner of Ms P prior to and at 31 December 2020. In so finding, the judge did not fall into error.
20. The grounds submit that Mr P was not a durable partner (as defined) of Ms P because he never had a “relevant document” on the basis of his relationship with her. The difficulty with this argument is that Mr P did not necessarily need to hold a relevant document as Ms P’s durable partner. The definition of a durable partner in Annex 1 provides that a person in Mr P’s position can be a durable partner where **either** he held a relevant document as the EEA national’s partner **or** he was otherwise lawfully resident in the UK. There was some discussion before me about the basis of Mr P’s

lawful residence in the UK prior to his obtaining pre-settled status in November 2020 but it was not in dispute that the unchallenged finding of the judge was that he was lawfully in the UK with a residence card prior to this date. Accordingly, the judge did not err in finding that Mr P was a durable partner even though he did not have a residence card as Ms P's partner. It was sufficient for him to establish that he was "otherwise lawfully resident in the UK" and the grounds do not challenge the judge's findings establishing this.

21. In conclusion, the respondent cannot succeed on the basis of the grounds as drafted because the grounds are based on a misapprehension that the spouse of an EEA citizen must have married an EEA citizen prior to 31 December 2020. However, it is clear from subparagraph (a)(i)(bb) of the definition of "family member of a relevant EEA citizen" that there is a route for the parents of those who marry an EEA citizen after 31 December 2020 so long as there was a durable partnership (as defined) prior to 31 December 2020 as well as at the date of the application. The challenge to the judge's finding that there was a durable partnership is also based on a misapprehension; which is that Mr P would have to have had a "relevant document" as Ms P's partner when in fact the definition of durable partner encompasses people lawfully in the UK without a relevant document.

22. Towards the end of the hearing, after I had outlined my preliminary view, Ms Cunha asked for an adjournment in order to obtain input from "policy" and make written submissions. I refused on the basis that nothing unanticipated had arisen at the hearing and there was no reason the respondent could not have obtained input from 'policy' (or anyone else) prior to the hearing; and the appellants were likely to be significantly prejudiced by directing the parties to make written submissions given that this is a complex area of law and they are unrepresented. In the event the respondent were permitted to make post hearing written submissions fairness would most likely require a further hearing, which would create delay and cause expense. Having regard to all of the relevant circumstances - and to the overriding objective - I reached the conclusion that an adjournment should not be granted.

Notice of Decision

23. The grounds of appeal fail to identify an error of law in the decision of the First-tier Tribunal. The decision of the First-tier Tribunal stands.

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UI-2022-004017 (EA/02176/2022)

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 28 December 2022