



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

Appeal Number: EA/50732/2021
UI-2022-000568; IA/04209/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2022**

**Decision & Reasons Promulgated
On 23 November 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MANUEL GONCALVES

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Steadman, instructed by Deo Volente Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Timor Leste born in December 1992 who arrived in the UK as a visitor in June 2019. On 29 December 2020, he applied for a residence card as the extended family member of his brother Pedro Ximenes Goncalves, a Portuguese citizen, under the Immigration (EEA) Regulations 2016. His application was refused on 18 March 2021 and his appeal was dismissed by First-tier Tribunal Judge F E Robinson in a decision promulgated on the 9 February 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Connal on 14 March 2022 on the basis that it was arguable Judge Robinson had erred in

law in refusing to admit late evidence, or adjourn the hearing so that that the evidence could be considered, as it went to past dependency which was a pivotal issue in the appeal. Permission was granted on all grounds.

3. Upper Tribunal Judge Lindsley found there was an error of law in the decision of the First-tier Tribunal for the reasons given in her decision promulgated on 23 May 2022. She set aside the decision dismissing the appeal, preserving the findings at [33] to [37], and adjourned the appeal for re-hearing before the Upper Tribunal.
4. The issue before me was whether the appellant was dependent on his brother or a member of his brother's household before he came to the UK. I considered the appellant's consolidated bundle of 274 pages and the oral evidence of the appellant, his brother, his uncle and his friend.
5. Mr Walker did not challenge the appellant's evidence and conceded the appeal. I find the appellant has shown on the balance of probabilities that he was dependant on his brother prior to coming to the UK under regulation 8 of the Immigration (EEA) Regulations 2016. I allow his appeal under the Immigration (EEA) Regulations 2016.

Notice of Decision

Appeal allowed.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 14 October 2022

TO THE RESPONDENT **FEE AWARD**

I make no fee award because the appellant produced further evidence post-application on the day before the hearing before the First-tier Tribunal.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 14 October 2022

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.