



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

Case No: UI-2024-003927  
First-tier Tribunal No:  
EA/03530/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 05 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE RUDDICK**

**Between**

**ARKIMED BEQIRAJ**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 29 October 2024**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hussain dismissing his appeal against the respondent's decision to refuse to grant him limited leave to remain under Appendix EU as the spouse of a relevant EEA citizen.
2. The appellant asked for his appeal before the First-tier Tribunal to be heard on the papers. The Judge dismissed the appeal on the grounds that the appellant had failed to establish that he met the requirements of Appendix EU because:

"14. In relation to the merits of the application, the appellant appears also to have missed the respondent's point of refusal which was that only those who were already resident in the United Kingdom by 31

December 2020 had the right to apply under the EU Settlement Scheme. It is not clear the date on which the appellant entered this country or when he married his Greek national sponsor. However, unless the appellant can prove that he and she were resident in the United Kingdom before 31 December 2020 and continued to remain here and are either spouses or in a cohabiting relationship that began two years prior to the 31<sup>st</sup> of December 2020, his application cannot succeed.”

3. The appellant was granted permission to appeal on the ground that the Judge failed to have regard to material evidence, namely a marriage certificate showing that he and his spouse had married on 5 July 2019 and bank statements showing transactions in the UK between July 2020 and July 2023.
4. The appeal was listed for hearing before the Upper Tribunal, and the appellant was sent standard directions. These informed the appellant of the date of hearing and that if he did not attend in person, the appeal might be decided in his absence.
5. The appellant did not attend the hearing. The appellant had clearly received the notice of hearing, as he had filed further submissions by email in which he referred to the date of hearing before the Upper Tribunal, reiterated his grounds of appeal and requested that the matter be remitted to the First-tier Tribunal for a decision on the papers. Under the circumstances, I considered that the appellant had chosen to have the hearing held in his absence, and that given the narrow issues to be decided, it was fair to do so.
6. At the hearing, Mr Terrell confirmed that both the marriage certificate and the bank statements referred to in the grounds of appeal had been in the respondent’s bundle before the First-tier Tribunal.
7. Given that there were documents before the Judge purporting to confirm both the date of the appellant’s marriage and his presence in the UK between July 2020 and July 2023, I find it was a material error of law for the Judge to fail to take these documents into consideration before deciding that his date of marriage was “not clear” and that the appellant had not established his residence in the UK. It may have been open to the Judge to find that, when viewed in the context of the rest of the evidence before him, these documents were not reliable or sufficient to meet the appellant’s burden of proof. But this not what he did. He proceeds as if the appellant had simply “missed the point” and failed to address these issues.

### **Notice of Decision**

8. The making of the decision of the First-tier Tribunal involved the making of a material error of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)

(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Hussain.

9. The Secretary of State has requested before the Upper Tribunal that this appeal be listed for an oral hearing so that the credibility of the appellant's account can be fully tested. Whether to list the appeal for an oral hearing is a matter for the First-tier Tribunal but at Mr Terrell's request, I record that this request has been made before the Upper Tribunal. The respondent may wish to communicate their lack of consent to this appeal being decided on the papers directly to the First-tier Tribunal, pursuant to Rule 25(a) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

**E. Ruddick**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**1 November 2024**