



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: UI-2022-003130**

**EA/00725/2022**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 October 2022**

**Decision & Reasons Promulgated  
On 30 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**DONARDO NEZAJ  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr Mustafa, Counsel, instructed by the AIRE Centre

**DECISION AND REASONS**

1. This is an appeal against the decision dated 3 May 2022 of First-Tier Tribunal Judge Morgan which allowed the appeal of Mr Nezaj brought against a decision of the Secretary of State dated 4 January 2022 which refused an application made under the EU Settlement Scheme (EUSS).
2. The respondent was born on 14 October 2005 and is a citizen of Albania. He applied under the EUSS on the basis that he was an extended family

member (EFM) of his older brother, Mr Drillon Nezaj, who is an Italian national exercising Treaty rights in the UK.

3. The First-tier Tribunal found the respondent and sponsor to be related as claimed. It was found that the respondent had been dependent on the sponsor for financial support for a lengthy period. It was found that the sponsor's provision for the family was also demonstrated by his support of his parents and grants of leave to them where that was so. These findings, set out in paragraph 9 of the First-tier Tribunal decision, were not challenged by the Secretary of State and remain extant.
4. The First-tier Tribunal went on to find that the respondent met the requirements of EUSS.
5. At the hearing, Mr Mustafa conceded that the First-tier Tribunal was in error where the case of Batool and others (other family members: EU exit) [2022] UKUT 219 (IAC) was a complete answer to the matter and showed that the First-tier Tribunal was in error and that the appeal had to be remade as refused. The respondent had not been "facilitated" by the Secretary of State prior to 31 December 2020 and so could not rely on the Withdrawal Agreement or the Immigration Rules in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

#### **Notice of Decision**

6. The decision of the First-Tier Tribunal discloses an error of law and is set aside.
7. The appeal is re-made as refused.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Dated: 24 October 2022