



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000108

First-tier Tribunal Nos: EU/50382/2023
LE/00363/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 28th of March 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN
DEPUTY UPPER TRIBUNAL JUDGE BEN KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MONIKA HELENA GORSKA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

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

Heard at Field House on 29 February 2024

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Morgan heard at Taylor House on 30 November 2023 and promulgated on 4 December 2023. In that appeal Judge Morgan allowed Ms Gorska's appeal in relation to the EU Settlement Scheme (EUSS) on the basis that the judge was satisfied that Ms Gorska was resident in the United Kingdom before the date of the United Kingdom exit from the European Union.
2. The Secretary of State challenges the Judge's decision on one ground, namely there is a material misdirection of law in relation to the burden and standard of proof, particularly where the First-tier Tribunal Judge found at paragraph 9:

“In light of the findings above I find that the appellant has satisfied me on a balance of probabilities that he [sic] meets the requirements of withdrawal agreement because the respondent’s decision is disproportionate”

3. Then the Judge found at paragraph 7 the Respondent had failed to provide evidence that the appellant’s wage slips and residence could not be verified. It is submitted in making this finding the Judge has failed to have regard to paragraph 38 of the case of **Tanveer Ahmed v Secretary of State for the Home Department [2002] UKIAT 00439**.
4. We agree in small part with the Secretary of State that it was unnecessary for the Judge to reverse the burden on the Secretary of State to disprove the wage slips in this case but there was also issues of the appellant’s tenancy agreement which were not challenged. There was therefore evidence before the Judge and there is therefore evidence before us today that Ms Gorska was resident in the United Kingdom prior to the withdrawal agreement date and therefore the judge was right to allow the appeal and we find no error of law.

Decision

1. There is no error of law and the appeal is dismissed.

Ben Keith

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 February 2024