



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

**Case No: UI-2022-003233**  
**First-tier Tribunal No:**  
**EA/15118/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 23 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Waheed Abdul**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Waheed Abdul, in person, unrepresented

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 21 November 2023**

**DECISION AND REASONS**

1. The appellant is a national of the Netherlands. On 30 June 2021 he made an application under the EU Settlement Scheme. The respondent considered whether the appellant meets the requirements for settled status or pre-settled status under the scheme by reference to the requirements set out in rule EU14 of Appendix EU to the Immigration Rules. The application was refused by the respondent for reasons set out in a decision dated 2 October 2021. The respondent said that the

appellant had not provided any evidence to confirm when he started residing in the UK, and the respondent was unable to confirm that the appellant is completing a 'continuous qualifying period of residence' in the UK.

2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Parkes for reasons set out in his decision promulgated on 14 June 2022. The appeal was determined on the papers. At paragraph [4] of the decision, Judge Parkes referred to the evidence that was before the Tribunal:

"The Respondent's bundle includes the Refusal Letter, the Certificate of Application of the 30th of June 2021, a copy of the Appellant's Netherlands passport, a Monzo bank account for the period 01/06/2021 - 31/08/2021 with an address in Bolton and a utility bill/tax invoice of the 31st of March 2021 for that month. The Notice and Grounds of Appeal contain that document, the Appellant's passport and the Refusal Letter. There is no other evidence."

3. All of that evidence post-dates 31 December 2020. At paragraph [6] of his decision, Judge Parkes said:

"There is simply nothing to show that the Appellant was in the UK on or before the 31 of December 2020 let alone that he was exercising treaty rights. Article 8 does not arise in EUSS cases but in any event there is no evidence to show that article 8 is engaged on any basis. Useful or reliable evidence is conspicuous by its complete absence and there is no basis for finding that the Appellant meets any part of the applicable rules."

4. The appellant claims the decision of Judge Parkes failed take into account the Grounds of Appeal and the bundle of documents that was lodged after the appeal was lodged, to demonstrate the appellant was in the UK prior to 31 December 2020. The appellant claims that in support of his claim that he was resident in the UK prior to 31 December 2020, he had provided bank statements and utility bills. The appellant claims the bank statements demonstrate that the appellant was paying for a gym membership and showed payment of phone bills by direct debit together with costs of daily expenses.

5. Permission to appeal was granted by Upper Tribunal Judge Blundell on 13 January 2023. He said:

"In addition to the evidence the judge listed at [4], there is before me an invoice from Overseas Pakistanis Legal Service, addressed to the appellant at an address in Bolton, dated 11 August 2020. That invoice appears to have been before the judge, contained as it was in the appellant's appeal bundle, and it is arguable that he failed to have regard to it.

3. Whether any such failure was material, and whether there was any additional evidence which bore on the question, are matters for the judge who hears the appeal."

6. Mr Abdul attended in person was not represented at the hearing before me. In the Form IAFT-5; Appeal against your Home Office Decision, in section 3(c), the appellant said that he reserves the right to send further documents as the appellant is accumulating documents and the case

bundle will be sent to the parties and the Tribunal in due course. That form was signed by the appellant and is dated 2 November 2021. It appears the Tribunal was provided with a utility bill issued by 'Champion Energy' dated 31<sup>st</sup> March 2021, and a Monzo Personal Account Statement for the period 1 June 2021 to 31 August 2021. Although Mr Abdul was unable to confirm when it was sent to the First-tier Tribunal, the only other document that appears to have been received by the Tribunal is an invoice that was issued by 'Overseas Pakistanis Legal Services' that is addressed to the appellant at an address in Bolton (*the same address as appears in the utility bill and Monzo Bank Statements*) and is dated 11 August 2020.

7. At the hearing before me, Mr Abdul confirmed that despite the reference in the grounds of appeal to Judge Parkes having failed to take into account a bundle of documents filed after the grounds of appeal were lodged, the only evidence that he provided in support of his appeal was that which is listed in paragraph [4] of the decision of Judge Parkes and the invoice issued by 'Overseas Pakistanis Legal Services'. During the course of the hearing it became apparent that the appellant had in fact made a further application under the EU Settlement Scheme on 19 November 2021. The appellant said that in support of that application, he had also provided evidence that he was employed by 'Gran Superstores' in Bolton for two months in October and November 2020. He was paid in cash and he had provided the payslips. Those payslips had not been provided by the appellant to the respondent in support of the application he made on 30 June 2021 and Mr Abdul accepted he had not provided that evidence to the First-tier Tribunal in his appeal against the respondent's decision dated 2 October 2021.
8. Mr McVeety checked the Home Office records that he could access and he was able to confirm that the appellant had indeed made a further application under the EU Settlement Scheme on 19 November 2021. That application was refused by the respondent on 13 December 2022 and it appears that an appeal against that decision (EA/00137/2023) was dismissed by the First-tier Tribunal on 13 July 2023. A copy of the respondent's decision dated 13 December 2022 and the decision of the First-tier Tribunal dismissing the appeal was not available and I do not have the benefit of those decisions. For his part, Mr Abdul accepted that the application he made on 19 November 2021 was refused by the respondent. He said that he had lodged an appeal and he recalls attending a hearing earlier this year. He was represented by Miss Hashmi of Mamoon Solicitors and as far as he is aware, a decision has not been promulgated by the First-tier Tribunal. He said that he last spoke to his representatives about that appeal in August 2023.
9. In reply to the grounds of appeal, Mr McVeety accepts that Judge Parkes does not refer to the letter from 'Overseas Pakistanis Legal Services' in his decision, but he submits, that is immaterial to the outcome of the appeal. He submits the letter does nothing more than to establish that the appellant had a postal address in the UK, and does not establish that he was resident in the UK before 31 December 2020. In any event, paragraph EU14 of Appendix EU required the appellant to establish that he is not

eligible for indefinite leave to enter or remain under paragraph EU11, solely because he has completed a continuous qualifying period of less than five years.

**Decision**

10. The documents that are referred to by Judge Parkes in paragraph [4] of his decision all post-date 31 December 2020. They establish that the appellant was in the UK during 2021 but do not confirm his presence in the UK prior to 31 December 2020. Mr Mcveety accepts there is no reference in the decision of Judge Parkes to the invoice issued by ‘Overseas Pakistanis Legal Services’ that is dated 11 August 2020. That is plainly a document that supports the appellant’s claim that he was residing in the UK prior to 31 December 2020. I accept the failure of Judge Parkes to consider or refer to that invoice amounts to an error of law.

11. The question for me is whether that error is material to the outcome of the appeal. Mr Abdul accepted before me that apart from the documents referred to by Judge Parkes in paragraph [4] of his decision and the invoice dated 11 August 2020, he did not provide the Tribunal with any further evidence in support of the appeal. In order to succeed in his appeal it was for the appellant to establish that he meets the requirements for settled status or pre-settled status under the scheme by reference to the requirements set out in rule EU14 of Appendix EU, which insofar as is material provides:

“EU14. The applicant meets the eligibility requirements for limited leave to enter or remain where the Secretary of State is satisfied, including (where applicable) by the required evidence of family relationship, that, at the date of application, condition 1 or 2 set out in the following table is met:

Condition 1 is met where:

(a) The applicant is:

(i) a relevant EEA citizen; or

(ii) a family member of a relevant EEA citizen; or

(iii) a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen; or

(iv) a person with a derivative right to reside; or

(v) a person with a Zambrano right to reside; and

(b) The applicant is not eligible for indefinite leave to enter or remain under paragraph EU11 of this Appendix solely because they have completed a continuous qualifying period of less than five years; and (my emphasis)

(c) Where the applicant is a family member of a relevant EEA citizen, there has been no supervening event in respect of the relevant EEA citizen

12. In summary, it was for the appellant to establish that he has completed a continuous qualifying period of less than five years. The term ‘continuous qualifying period’ is defined in Annex 1 of Appendix EU. The period of residence must have begun before the specified date and excludes

absence(s) from the UK which exceed a total of six months in any 12-month period except in certain circumstances, including, *inter alia*, absences because of the Covid 19 pandemic. The continuous qualifying period must continue at the date of application, unless one of the exceptions set out in sub-paragraph (c) of the definition of 'continuous qualifying period' in Annex 1 applies. None of the exceptions apply here.

13. The invoice issued by 'Overseas Pakistanis Legal Services' is dated 11 August 2020. Taking the other documents relied upon by the appellant before the First-tier Tribunal in chronological order, the first in time is the invoice issued by Champion Energy dated 31 March 2021. That is an invoice for the period 1 March 2021 to 31 March 2021. The only other evidence provided by the appellant is a Monzo personal Account Statement for the period 1 June 2021 to 31 August 2021. There is no evidence of the appellant's presence in the UK between August 2020 and March 2021, a period of some seven months. There was quite simply insufficient evidence before the First-tier Tribunal to establish that the appellant was in fact in the UK resident in the UK on the specified date (31 December 2020) or that he is completing a continuous qualifying period of residence without an absence from the UK for more than 6 months in total, in any 12-month period. The appeal was therefore bound to fail because of the absence of evidence to establish the relevant requirements set out in Appendix EU were met.
14. It follows that in my judgement, the failure of Judge Parkes to refer to the invoice issued by 'Overseas Pakistanis Legal Services' was not material to the outcome of the appeal. I am satisfied that the paucity of the evidence before the First-tier Tribunal regarding the appellant's presence in the UK at material times was such that the appeal was bound to fail.
15. I therefore dismiss the appeal.
16. I simply add that it is wholly unsatisfactory that the appellant had failed to disclose to the Tribunal that he had made a further application under the EU Settlement Scheme on 19 November 2021. The appellant was aware that the application has been refused by the respondent on 13 December 2022 and he was aware that he had attended the hearing of an appeal against that decision. I have not had sight of the respondent's decision or the decision of the First-tier Tribunal by which the appellant's appeal was dismissed. I was informed by Mr McVeety that the appeal against the respondent's decision of 13 December 2022 (EA/00137/2023) was dismissed by the First-tier Tribunal on 13 July 2023. The appellant claims he has not received that decision. It is incumbent upon him and his representatives to make enquiries with the First-tier Tribunal to ensure the decision has been promulgated and has been received.

### **Notice of Decision**

17. The appeal is dismissed.

**V. Mandalia**

**Case No: UI-2022-003233**  
**First-tier Tribunal No: EA/15118/2021**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**21 November 2023**