



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003913

First-tier Tribunal No: EA/15396/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 July 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

MOHAMMAD EJAZ SHARIF KHAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam of Counsel, instructed by Pearl Valley Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 17 July 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Hawden-Beal promulgated on 12 July 2022, in which the Appellant's appeal against the decision to refuse his application for settled or pre-settled status under the EU Settlement Scheme dated 5 November 2021 was dismissed.
3. The Appellant is a national of Spain, born on 1 July 1975, who arrived in the United Kingdom in October 2020 and made an application under the EU Settlement Scheme on 30 June 2021. The Respondent refused the application on the basis that although the Appellant had shown periodic residence in the United Kingdom, there was no evidence to show a sufficient period of continuous

residence to meet the requirements of Appendix EU. There were four attempts to obtain further information from the Appellant, which was not provided.

4. Judge Hawden-Beal dismissed the appeal in a decision promulgated on 12 July 2022 on all grounds. In essence, the Judge found that the Appellant had to show that he was in the United Kingdom before the specified date of 31 December 2020 and was still here at the date of his application, except for any absence not exceeding six months in any twelve month period. On the evidence, the Judge found that the Appellant was in the United Kingdom between 7 October 2020 and 31 January 2021; and after April 2021; but that there was insufficient evidence for the period between January 2021 and April 2021. For these reasons, the Judge found that the Appellant had not resided for the required continuous five year period for settled status; nor between January 2021 to April 2021 such that he does not qualify for pre-settled status.

The appeal

5. The Appellant appeals on the primary basis that the First-tier Tribunal has erred in law as on the facts, he meets the requirements of paragraph EU14 of Appendix EU for pre-settled status in the United Kingdom. In the alternative, that the First-tier Tribunal has erred in law in finding that the Appellant was not in the United Kingdom between January and April 2021 in circumstances where there were no adverse credibility findings against the Appellant or his witness; that the First-tier Tribunal failed to comply with the principle of proportionality; and that the hearing before the First-tier Tribunal was procedurally unfair as the Appellant was not given proper notice of the issues, the reasons for refusal letter not being clear as to what precisely was in issue.
6. At the oral hearing, Mr Alam relied on the grounds of appeal, reiterating the requirements of paragraph EU14 of Appendix EU and the definition of 'continuous qualifying period'.
7. On behalf of the Respondent, Ms Everett accepted that on the facts as found by the First-tier Tribunal, the Appellant met the criteria for pre-settled status as he had been in the United Kingdom before the specified date; was in the United Kingdom at the date of his application and the period of absence was less than six months.
8. In these circumstances, the parties agreed that the First-tier Tribunal decision should be set aside and the appeal remade in the Appellant's favour.

Findings and reasons

9. In the First-tier Tribunal decision, the Judge sets out in paragraph 15 the eligibility requirements in paragraph EU14 of Appendix EU, including Condition 1 which requires that the Appellant is a relevant EEA citizen and not eligible for indefinite leave to enter or remain under paragraph EU11 solely because they have completed a continuous qualifying period of less than five years. In the following paragraph, the relevant parts of the definition of continuous qualifying period are set out as "*a period of residence in the UK and Islands which began before the specified date; and (b) during which none of the following occurred: (i) absence(s) from the UK and Islands which exceeded a total of six months in any 12-month period; ... and (c) which continues at the date of application.*".

10. On the findings made by the First-tier Tribunal, the Appellant was in the United Kingdom before the specified date (from 7 October 2020); had not been absent for six months since arrival (the only period for which there was no evidence of residence was approximately 2-3 months between the end of January 2021 and April 2021) and the Appellant's residence continued from April 2021 to the date of hearing. In these circumstances, on its face the Appellant meets the requirements of paragraph EU14 of Appendix EU and it is entirely unexplained why in the final paragraph the First-tier Tribunal finds that because she can not be satisfied that the Appellant had been residing in the UK and Islands for a continuous period of 5 years, nor between the end of January 2021 to April 2021, the Appellant does not meet the requirements of either paragraph EU11 or EU14.
11. The First-tier Tribunal has erred in law in its application of the facts to paragraph EU14, which as the parties agree, is met by the Appellant. The period of absence found by the First-tier Tribunal is far less than the maximum six month period of absence which would take him outside of the required continuous qualifying period as defined.
12. For these reasons, the decision of the First-tier Tribunal contains a material error of law such that it must be set aside. The findings of fact are clear in this case, as is that the Appellant meets the requirements of paragraph EU14 for pre-settled status. As such, I remake the appeal to allow it under Appendix EU to the Immigration Rules.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remade as follows:

The appeal is allowed under Appendix EU to the Immigration Rules.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th July 2023