



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

**Case No: UI-2022-004951**  
**First-tier Tribunal No:**  
**EA/00175/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 12 December 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**CAROLINE CRISTINE SANTOS SAID**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Jedede, Legal Representative from Ashton Ross

For the Respondent: Mr D Clarke, Senior Presenting Officer

**Heard at Field House on 14 November 2023**

**EXTEMPORE RE-MAKING DECISION AND REASONS**

## **Introduction**

1. This is the re-making of the decision in Ms Said's case following a previous error of law decision made by a panel of the Upper Tribunal comprising myself and Deputy Upper Tribunal Judge Farrelly, promulgated on 8 September 2023. That error of law decision is annexed to this re-making decision and the two should be read together.
2. By way of brief background, Ms Said, who I shall refer to hereafter as "the Appellant", is a citizen of Brazil. She came to the United Kingdom from the Czech Republic in March 2020, married her husband, a Portuguese national, in October 2020, and in June 2021 made an application for pre-settled status under Appendix EU of the EUSS. That application was refused by the Secretary of State ("the Respondent") by a decision dated 16 December 2021 on the basis that she had failed to demonstrate satisfaction of all the relevant eligibility requirements.
3. The First-tier Tribunal concluded that the Appellant had not proved that she had been resident in the United Kingdom prior to the specified date of 31 December 2020. The error of law decision concluded that the judge had materially erred in reaching that conclusion because he had failed to have proper regard to relevant evidence, in particular, Monzo bank statements and a supporting letter from a named individual. The judge's decision was set aside and the appeal retained in the Upper Tribunal for a resumed hearing in due course.

## **The issues and evidence**

4. The issue now to be determined is narrow in scope: was as the Appellant resident in the United Kingdom prior to the specified date and then running up to the date of her EUSS application in June 2021?
5. The error of law decision contained directions for the provision of a consolidated bundle from the Appellant. In the event, that consolidated bundle was provided extremely late in the day and quite obviously not in compliance with those directions. An oral direction was given at the resumed hearing for the Appellant's solicitors to provide a written explanation for this.

6. In any event, without objection from Mr Clarke, I admitted that consolidated bundle. The only new evidence contained in that bundle were Monzo bank statements covering a period from the beginning of 2021 through to 2023. That evidence, at least in part, went to the issue of the Appellant's residence in this country. It was therefore relevant to the issue before me.
7. The Appellant attended the hearing and despite being nervous, gave evidence and answered questions clearly. Mr Clarke quite properly asked her about certain transactions in the Monzo bank statements and a number of other matters.
8. Following that evidence and having clearly considered all the evidence with care, Mr Clarke informed me that he was prepared to accept that the evidence, as a whole, demonstrated that the Appellant had resided in the United Kingdom prior to the specified date of 31 December 2020 and that residence had continued until the date of her EUSS application in June the following year.

### **Conclusions on re-making the decision**

9. The question of the Appellant's residence in the United Kingdom was the only live issue before me. I accept that the concession made by Mr Clarke was done so properly and it was entirely consistent with the weight of the evidence, both documentary and what I regard to be the Appellant's credible answers, given at the hearing before me today.
10. In light of this, the Appellant did indeed satisfy the relevant requirements of Appendix EU in terms of eligibility for pre-settled status. Accordingly, her appeal falls to be allowed with reference to the Immigration (Citizens' Rights Appeals)(EU) Regulations 2020 under which it was brought.

### **Postscript**

11. Following the oral direction referred to earlier in this decision, Mr Jegede provided a response by email dated 20 November 2023. He

confirmed that its contents were based on information provided by Ashton Ross. The response stated that there had been a delay in obtaining certain information from the Appellant herself. There had also been an oversight on the part of the representatives. Mr Jegede took full responsibility for failing to provide this explanation at the time the consolidated bundle was belatedly filed and served.

12. In the circumstances, I accept the explanation provided as satisfactory and do not require an additional response from Ashton Ross. Having said that, the importance of complying with directions (or at the very least informing the Tribunal of any difficulties with such compliance - there is the possibility of seeking to vary timeframes) will, I hope, remain at the forefront of this firm's collective mind.

**Notice of Decision**

**The decision of the First-tier Tribunal involved an error of law and that decision has been set aside.**

**I re-make the decision by allowing the Appellant's appeal under the Immigration (Citizens' Rights Appeals)(EU) Regulations 2020.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 21 November 2023**

**ANNEX: THE ERROR OF LAW DECISION**

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

Case No: UI-2022-004951

First-tier Tribunal No:  
EA/00175/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

Before .....

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR  
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**CAROLINE CRISTINE SANTOS SAID  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K Jegede, Solicitor, instructed by Ashton Ross Law  
For the Respondent: Dr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 12 July 2023**

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a citizen of Brazil who was at all material times, and still is, married to a Portuguese national. In June 2021 she made an application for pre-settled status under the EUSS. This was refused by the Respondent by a decision dated 16 December 2021 on the basis that the Appellant had failed to demonstrate that she satisfied the eligibility

requirements under either EU11 or EU11A, EU14 or EU14A of Appendix EU to the Immigration Rules.

### **Decision of the First-tier Tribunal**

2. The Appellant appealed to the First-tier Tribunal and indicated that she wished to have that appeal decided without a hearing. This was duly done and by a decision promulgated on 29 March 2022, First-tier Tribunal Judge Ford (“the Judge”) dismissed the appeal. In so doing, she stated that the core issue to be decided was whether the Appellant had been resident in the United Kingdom as at the specified date, namely 31 December 2020.
3. In light of the evidence to which she referred, the Judge concluded that the Appellant had not discharged the burden of demonstrating her residence in the United Kingdom as at the specified date. The Judge found that there were concerns relating to certain aspects of the evidence put forward, noting in particular a photocopy of a stamp in a passport, but without the rest of that document being provided. There was also reference to a letter from a friend of the Appellant which purported to support the Appellant’s claim to have been resident at the material time and indeed thereafter. At [4] of her decision the Judge recorded that the letter in question related to the period October to November 2020. In fact, that letter covered a longer period and ran until November 2021.
4. In light of the Judge’s findings, she dismissed the appeal. The Appellant then appealed asserting that the Judge had failed to have regard to material evidence in respect of the United Kingdom residency.
5. Permission was granted in line with the grounds of appeal. No rule 24 response was provided by the Respondent.

### **The hearing**

6. At the outset of the hearing we indicated some concern as to certain evidence that the Judge had apparently failed to engage with.
7. Mr Clarke referred us to the requirements of Appendix EU and in particular EU14 and Annex 1, relating to those applying for pre-settled status. He submitted that the relevant period with which the Judge should have been concerned was the specified date (31 December 2020) all the way through to the date of the application in June 2021. The Judge had therefore not in fact addressed the right question. Mr Clarke also accepted the Judge had erroneously referred to the friend’s letter as relating to November 2020 when in fact it referred to November 2021. Mr Clarke accepted that there were errors in the decision, but submitted that these were immaterial because the evidence which had been before the Judge was insufficient to have met the requirements regarding the

continuous residence between the specified date and the date of application.

8. Mr Jegede submitted that there was evidence before the Judge which in effect was capable of demonstrating that continuous residence, albeit that the Judge had not addressed the correct question.
9. Mr Clarke had referred to the Respondent's guidance which set out the types of evidence which would be acceptable to show residence, but, as was pointed out at the hearing, this was guidance and did not constitute requirements of the Rules themselves.

## **Conclusions**

10. In all the circumstances, we conclude that the Judge erred in law and that the errors of law were material to the outcome.
11. Our provisional view was that the Judge had failed to address material evidence and we confirm that view in respect of Monzo Bank statements and other matters referred to in the grounds and the grant of permission. The Judge erred in respect of her consideration of the friend's letter, regarding it as referring to an earlier period than in fact it did.
12. Having considered the provisions of Appendix EU to which we were referred, we accept Mr Clarke's submission that the Judge had asked herself the wrong question in respect of the core issue in the appeal. It was not simply whether the Appellant was resident in the United Kingdom as at the specified date, but rather whether she could have shown continuous residence between that date and the date of the application in June 2021: EU14 and EU 14A and Annex 1.
13. There was some force in Mr Clarke's submission that the errors were immaterial in light of the evidence and the Respondent's guidance. However, we take account of the fact that the guidance is just that: the Judge would not have been bound by its reference to the types of material which an individual should be providing in support of an application. The bank statements referred to periods in 2021 and were capable of lending support to the Appellant's residence in this country then. Further, the letter from the friend purported to cover a period including the relevant period between December 2020 and June 2021. When combined, that evidence might have made a difference to the outcome of the appeal and thus the materiality threshold is met in this particular case.
14. For these reasons, we set the Judge's decision aside. This appeal will be retained in the Upper Tribunal for a resumed hearing in due course. The Appellant is now clearly on notice as to the case against her and her legal representatives would be advised to address all matters in respect of any rule 15(2A) application which may be made.

**Notice of Decision**

**The decision of the First-tier Tribunal involved the making of an error of law. That decision is set aside.**

**This appeal is retained in the Upper Tribunal for a resumed hearing in due course, following which the decision will be re-made.**

**No anonymity direction is made.**

**Directions to the parties**

- (1) No later than 21 days after this decision is sent out, the Appellant shall file and serve a consolidated bundle of all evidence relied on (with any new evidence identified as such and accompanied by a rule 15(2A) notice). At the same time, the Appellant must inform the Upper Tribunal whether she her husband will require an interpreter for the next hearing and, if so, in what language(s);**
- (2) Any further evidence relied on by the Respondent shall be filed and served no later than 35 days after this decision is sent out;**
- (3) The parties may apply to vary these directions.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 24 July 2023**