



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

**Case No: UI-2023-003223**  
**First Tier No: EA/00963/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 31 January 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**CLIFFORD CHIKWENDU**

**(NO ANONYMITY ORDER MADE)**

**and**

**Secretary of State for the Home Department**

Appellant

Respondent

**Representation:**

For the Appellant: Ms Mair

For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 17 October 2023

**DECISION AND REASONS**

1. The appellant, a citizen of Nigeria, was born on 24 December 1975 applied for settled or pre-settled status under EU Settlement Scheme on the basis of his marriage to a Czech citizen.
2. The application was refused by the respondent on 29 October 2021. The appellant appealed to the First-tier Tribunal, which, in a decision promulgated on 24 April 2023, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
3. The parties agree that the judge did not have before him a supplementary bundle of documents of the appellant. The judge determined the appeal on the papers after the appellant asked for such a determination. The only question in

the appeal is whether the judge acted unfairly by proceeding to dismiss the appeal in the absence of the bundle of documents.

4. I find that the appeal should be dismissed. I have reached that conclusion for the following reasons.
5. First, I am not satisfied that the bundle of documents was ever filed by the appellant's first representative (Envoy) or, after that the representative was discharged by the appellant, by the appellant himself. I acknowledge that the bundle of documents in question was referred to in a skeleton argument which was filed by the appellant on 7 June 2022. The appellant asserts that the reference in the skeleton argument should have alerted the judge to the existence of the bundle of documents for which the judge should have called (adjourning the appeal, if necessary). I disagree. The duty under the rules to file the bundle rested on Envoy, the appellant's representative at the relevant time. No explanation has been offered for the failure of either Envoy or subsequently the appellant himself for not filing the bundle of documents. The appellant asserts that the bundle was filed but he has taken no steps whatever to prove that assertion. He has, for example, not shown that he has contacted Envoy to check what exactly had happened. In *BT (Former solicitors' alleged misconduct) Nepal* [2004] UKIAT 00311, the IAT held that: '*If an appeal is based in whole or in part on allegations about the conduct of former representatives, there must be evidence that those allegations have been put to the former representative, and the Tribunal must be shown either the response or correspondence indicating that there has been no response.*' The appellant has failed to comply with the duty on him identified in *BT*. Moreover, the reference to the bundle of documents in the skeleton argument is not, in my opinion, any kind of proof that the bundle was filed. The filing of the skeleton argument (7 June 2022) postdates the removal from the record of Envoy (29 May 2022). It was during Envoy's retainer that the bundle of documents should have been (and the appellant asserts was) filed; the reference in the skeleton argument is nothing more than an assumption (and not proof) on the part of the author of that document that the bundle had been filed.
6. My primary conclusion, therefore, is that the appellant (whose duty it is to prove that which he asserts) has failed to prove that the bundle of documents was ever filed at the First-tier Tribunal.
7. Secondly, I agree with Mr Tan that, even if the bundle of documents had been before the judge, the outcome of the appeal would have been no different. Only three documents appear in the bundle of documents which were not already before the judge. These include a statement from the appellant's partner. The probative value of this document is not impressive given that the appellant acknowledged that he could not prove that he had been in the United Kingdom from before 31 December 2021 until 25 June 2021 (when he made his EU Settlement Scheme application) or that he had been here between 2011 and 2012 and 2012 and June 2021. The appellant married his partner by proxy in October 2020 so the light which she might cast on the 'missing' periods is limited. She was not, significantly, cross examined. The other documents (two letters) postdate the 'missing' periods. Ms Mair urged caution as regards the

immateriality of any error on the part of the First-tier Tribunal. However, I am satisfied that there is no likelihood that, had the judge seen the bundle of documents whilst determining this paper appeal, he would have concluded that the appellant had proved that he was present in the United Kingdom during the 'missing' periods.

8. In the circumstances, I dismiss the appeal.

**Notice of Decision**

The appeal is dismissed.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 29 December 2023**