



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000973

First-tier Tribunal No:
EU/53274/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

BENJAMIN TEKYI MENSAH
(no anonymity order made)

Respondent

Representation:

For the Appellant: Ms A Nolan

For the Respondent: Mr H Broachwalla

Heard at Field House on 26 April 2024

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of the First-tier Tribunal signed on 18 February 2024, allowing the appeal of Benjamin Tekyi Mensah, a Ghanaian national, born 1 January 1970.
2. Mr Mensah's application was based on his marriage to his German partner Lydia Birkenbusch in December 2020; no issue properly arises as to that marriage's validity. His application was refused by the Secretary of State because he had completed the application form

stating he had lived in the UK for less than five years which, given the lack of other supporting evidence, cast doubt on whether he had achieved a period of continuing qualifying residence before 31 December 2020. Mr Mensah, however, contends that he made mistakes on the application form, thereby failing to demonstrate the underlying reality, which is that he had lived in the UK consistently since 2005.

3. The First-tier Tribunal accepted the genuineness of Mr Mensah's relationship and that he had met in 2019, cohabited since March 2020, and married on 14 December 2020. On the available evidence this was a durable relationship albeit one without two year's cohabitation as at the end of the Brexit transition period. Accordingly the appeal succeeded.
4. The Secretary of State appealed on the ground that the First-tier Tribunal had not made clear findings on Mr Mensah's continuing qualifying residence, and on the basis that, having strayed into the previously uncontested territory of relationship, it had given inadequate reasons for finding this was a relationship of sufficient durability.
5. Permission to appeal was granted on 11 March 2024 on the basis that a material error may have been made in relation to the relevance of continuing qualifying residence.
6. Before me, for the Respondent Ms Nolan submitted that the whole discussion of durable partner had been a red herring given that the Secretary of State in fact accepted the validity of Mr Mensah's marriage. But the Tribunal's conclusions were nevertheless flawed because its material reasoning focussed primarily on the question of relationship rather than upon continuous qualifying residence.
7. For the Appellant Mr Broachwalla submitted that oral evidence was sufficient in law for an application's success and on the facts of the case here, the period as to which the oral evidence attested, accepted by the Judge who assessed it, constituted a relevant period of continuous qualifying residence in the UK.

Decision and reasons

8. It seems that the First-tier Tribunal became confused by the Presenting Officer's stance below which led to unnecessary focus on the durability of the relationship, an irrelevance given the acceptance of the marriage's validity which meant there was no live contest as to whether Mr Mensah was a relevant family member. It made no clear finding on whether the Appellant had accumulated continuing qualifying residence prior to the end of the transition period.
9. However I do not accept this was a material error of law, for the simple reason that the First-tier Tribunal *did* make findings as to the relationship's formation and development in the UK from 2019 onwards.

An inevitable corollary of those findings is that it accepted that Mr Mensah was relevant in the UK over that period, at the very least, in the context of the evidence before it. That evidence included a letter from the Reverend Gavor of Labour of Love World Ministries confirming his weekly attendance at church throughout the whole of 2020. Whatever documents were potentially available, *Kaur* [2023] EWHC 1052 (Admin) summarises the position in English law: “As a matter of law, uncorroborated personal testimony is capable of proving a fact on the balance of probabilities; see, e.g., Phipson on Evidence (20th ed.) § 14-01.”

10. Thus the inevitable corollary of the findings of the First-tier Tribunal was that the Appellant *had* established a relevant period of continuing qualifying residence prior to 31 December 2020 and was eligible for EU pre-settled status.
11. The supporting evidence is not sufficiently clear to be confident that he qualified for EU settled status, and the First-tier Tribunal findings cannot be extrapolated to that effect. Nevertheless I find that the First-tier Tribunal’s error of law was not a material one.

Decision:

The decision of the First-tier Tribunal contained no material error of law. The Secretary of State’s appeal is dismissed.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

15 June 2024