



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002212
First-tier Tribunal Nos:
EU/54693/2023
LE/00977/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

Muhammad Faizan Khan
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms. B. Hashmi, Legal Representative, Mamoon Solicitors
For the respondent: Ms. S. Rushforth, Home Office Presenting Officer

Heard at Field House on 10 September 2024

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge C J Williams, (the "Judge"), promulgated on 10 April 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse his application for settled or pre-settled status under Appendix EU.
2. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman in a decision dated 5 June 2024 as follows:

"The application for permission to appeal was made in time. The grounds of appeal, which are far too long, assert essentially that the FtTJ erred in finding that the Appellant had not been resident in the UK as the family member of his father for at least a year prior to his father's death in that the FtTJ failed to apply a purposive approach to the meaning of 'continually resident'.

It would appear that the FtTJ was not greatly assisted by the Appellant's representative at the appeal hearing. Nevertheless it is arguable that given that the Appellant's mother and brother(s) who were with him and his father in Belgium between July 2020 and the father's death in 2020 have been granted EUSS it is arguable that the judge erred in dismissing the appeal. This is in the light of the fact that the continuous qualifying period of residence will not be broken by an absence of no more than 6 months in a 12 month period and that the Appellant has resided in the UK with his father since February 2018."

3. There was no Rule 24 response.

The hearing

4. The hearing was hybrid, with the parties attending remotely.
5. I heard submissions from both representatives following which I reserved my decision.

Error of Law

6. The issue before the Judge as set out at [6] was whether the appellant had spent a continuous qualifying period of at least one year in the United Kingdom. As identified by the Judge, given that the appellant had returned to the United Kingdom in December 2020, that period was from 13 December 2019 to 13 December 2020 [10].
7. There was no challenge from either party to the Judge's finding that this was the relevant period. The grounds assert that the Judge required the appellant to show his presence in the United Kingdom "from December 2020" [11], but this is not the case. The Judge set out the qualifying period as ending in December 2020. Further, while the grounds refer to the appellant's absence from July 2020 to December 2020 being caused by COVID [9], it is clear from the decision that the Judge does not accept that this was the length of the appellant's absence.
8. The grounds at [22] state that "the appellant and his family were clearly resident in the UK from January 2018" onwards. This is not the finding of the Judge who states that he has no evidence to show the appellant's presence from October 2019.
9. The Judge accepts at [13] that the appellant was in the United Kingdom doing his studies until 7 October 2019 as his attendance on his course was 100%. He then states that there is no documentary evidence relating to the appellant being in the United Kingdom until a United Utilities bill, dated 2 February 2021, which states that the appellant moved into the property he was being billed for on 1 February 2021.
10. At [11] the Judge sets out the appellant's chronology as follows:

"The appellant provides the following chronology of events in relation to where he was living around the time preceding his father's death. In paragraph 4 of his witness statement (p.20, SB), the appellant said he "went to Belgium sometime in December 2019 for holiday and returned back in January 2020 to the United Kingdom". The appellant then claims to have been in the United Kingdom between January 2020 until the family returned to Belgium in July 2020. He did not return to the United Kingdom until December 2020."

11. This is not a finding that the appellant was in the United Kingdom between January and July 2020, but rather what the appellant claims. The Judge finds at [14] that the appellant has not shown that he was in the United Kingdom between October 2019 and February 2021. He finds that it is difficult to accept a person could live in the United Kingdom and yet have no evidence whatsoever of their residence here for that period. The evidence of the appellant was that evidence of his ferry tickets between the United Kingdom and Belgium was stored by his father on his phone and he was not able to access this. The Judge states that he is willing to accept this as a plausible explanation for the absence of this evidence [12]. However, this finding applies only to the ferry tickets, not to the absence of documentary evidence in general.
12. The appellant's evidence was that his brother had returned with him to the United Kingdom in December 2020. The Judge states at [15]:

“It is unclear why, considering the appellant claimed to have returned to the United Kingdom in December 2020 with his older brother, why he was not called to give evidence. The appellant said his older brother had arranged his travel back to the United Kingdom, yet he did not give evidence of this. It was further argued by Mr Hachmi that the appellant's mother had travelled with the appellant, and yet her application to the respondent on the same basis was successful.”
13. It is submitted by the appellant that his mother and brother were granted leave on the basis that they had completed a qualifying period. However, as set out by the Judge at [16], there was no evidence before him in relation to the appellant's mother's application. She states:

“Whilst I accept the appellant's mother has clearly been granted leave under Appendix EU (a copy of her biometric residence permit appears at p.176, SB), I was not provided with the evidence she submitted to the respondent with her application. Mr Hachmi was unable to say why his evidence was not before me, or why the mother was not called to give evidence about the fact her situation was on all fours with the appellant's.”
14. The Judge was not provided with the evidence relating to the appellant's mother's application enabling him to see on what basis she had been granted leave. It is submitted that his brother had also been granted leave on the same basis, but there is no reference to the Judge having been provided with this evidence. The submissions which were made before me about the appellant being a member of the same household as his mother and brother, but being treated differently by the respondent, do not appear to have been put before the First-tier Tribunal. The Judge found that he did not have evidence of the appellant's presence after October 2019. He made no finding that the appellant was a member of the same household as his mother and brother.
15. In relation to any consideration of the COVID guidance, I accept the submission of Ms. Rushforth that this was not referred to in the skeleton argument, nor in submissions, and does not appear to be the basis on which the case was argued in the First-tier Tribunal. It is also accepted in the grounds that the appellant's representative agreed at the hearing that “the appellant could not succeed due to his absence from the United Kingdom”. The Judge was not bound to accept this, but his factual findings show that he did not accept the evidence of the appellant's presence in the United Kingdom.

16. I find that the Judge has made clear findings that there is no evidence which showed that the appellant was present in the United Kingdom between October 2019 and February 2021. Even allowing for a COVID absence, which was not in any event the way that the appellant's case was put, the Judge found that there was no evidence of the appellant's presence for over a year from 7 October 2019 until December 2020.
17. The weight to be given to evidence is a matter for the Judge. The grounds amount to no more than a disagreement with the findings of the Judge and do not identify the making of a material error of law. The Judge considered the evidence before him, and his findings were open to him on the basis of that evidence.

Notice of Decision

18. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.
19. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 September 2024