



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-002780
On appeal from: EA/08441/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th of October 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROSHAN SHOAIB
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Andrew McVeety, a Senior Home Office Presenting Officer

For the Respondent: Mr Azhar Chohan of Counsel, instructed by Archbold Solicitors Limited

Heard at Field House on 30 September 2024

DECISION AND REASONS

Introduction

1. The Secretary of State challenges the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 2 July 2022 to refuse him both pre-settled and settled status under the EU Settlement Scheme (EUSS). The claimant is a citizen of Pakistan.

2. **Mode of hearing.** The hearing today took place as a blended face to face and Microsoft Teams hearing, with Mr McVeety for the respondent appearing remotely and all other participants present in the hearing room. There were no technical difficulties. I am satisfied that the hearing was completed fairly, with the cooperation of both representatives.
3. The main basis of the claimant's case before the First-tier Tribunal was that he should have been granted EUSS status in 2021 as a dependent relative of his sister, with whom he lived in the Republic of Ireland until 2020.
4. The Secretary of State considered that the evidence required was both:
 - (a) a valid registration certificate, family permit or residence card issued by the UK under the EEA Regulations (or the equivalent document or other evidence issued by the Bailiwick of Jersey, the Bailiwick of Guernsey, or the Isle of Man under the relevant legislation there); and
 - (b) evidence which satisfies the Secretary of State that the family relationship continues to subsist.
5. For the reasons set out in this decision, I have come to the conclusion that the First-tier Tribunal erred in law, and that the decision should be set aside and substituted by a decision dismissing the appeal.

Procedural matters

6. On 24 September 2024, two months after being served with the grant of permission, and less than a week before the hearing, Archbold Solicitors, the claimant's representatives, sought a three-week adjournment of the hearing. They stated that:

“[We] are in the process of obtaining record of proceedings ...to file our response under rule 24 and to prepare for the hearing. As the record of proceedings is important and crucial to support the [claimant] in the appeal it is important to afford a sufficient time for a fair hearing.”
7. The claimant was out of time to file a Rule 24 Reply and there is no indication why the record of proceedings was considered 'important and crucial'. There is nothing from Mr Maqsood of Counsel, who appeared below, to explain what the relevance of the record of proceedings is, and his note of the First-tier Tribunal hearing is not produced. There is also nothing from Archbold Solicitors which explains why they delayed so long in preparing for the hearing.
8. On 27 September 2024, I refused the adjournment:

“The respondent (the appellant below) seeks an adjournment of the hearing listed for Monday 30 September 2024 to obtain the First-tier Judge's record of proceedings, which it is said will inform their Rule 24 Reply to the grant of permission.

There is no application for an extension of time nor any indication given as to why the First-tier Judge's record of proceedings would be relevant to the error of law hearing listed for the next working day after today, Monday 30 September.

The respondent is out of time to file a Rule 24 Reply. Permission to appeal was granted on 16 July 2024 and time for filing a rule 24 response expired on 16 August 2024: see paragraph 26(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). The application for an adjournment is refused."

9. The adjournment application was not renewed at the Upper Tribunal hearing.

Background

10. The claimant lived with his sister, a naturalised British citizen, in the Republic of Ireland between March 2016 and May 2019. His mother also lived in the family home. In 2017, he and his mother applied to the Irish authorities for an EUSS residence permit. The residence permit was granted to his mother, but initially not to the claimant.
11. On 4 December 2019, the claimant married Maria del Mar Alvarez Navarro at the Dublin Registrar's Office. They are recorded as living at 91 Dingle Road, Cabra West, Dublin 7, where his mother and sister also lived. The marriage is said not to have lasted very long. In 2020, the claimant's sponsor sister moved back to the UK for her work. The claimant remained in the Republic of Ireland, living with his mother.
12. It took until 1 June 2021, after the UK had exited the EU, for the claimant to be granted an Irish EUSS residence permit under Article 18(4) of the Withdrawal Agreement. The Irish residence permit is valid until 4 May 2026.
13. The claimant did not make any application for a family permit to the UK authorities before the specified date of 11 p.m. on 31 December 2020. In 2021, once they had their Irish EUSS status, the claimant and his mother moved to the UK and applied for EUSS family permits there. On 2 July 2022, the claimant's mother was granted pre-settled status in the UK.
14. The claimant was refused status. The EUSS allows for an extension of time to make an application where a person can show 'reasonable grounds for failing to meet the deadline for returning to the UK'. The reason advanced by the claimant was that his passport was with the Irish authorities until June 2021, and they had held it since he made the application in 2017. The Secretary of State considered that the claimant could not meet either of the limbs at (3) above and refused to grant EUSS status. The claimant appealed to the First-tier Tribunal.

First-tier Tribunal decision

15. The First-tier Judge allowed the appeal. The judgment records agreement between the parties that the only issue was the reasonableness of the claimant's explanation as to why he did not return to the UK before the specified date of 11 p.m. on 31 December 2020.
16. The First-tier Judge found the claimant's evidence 'broadly credible and consistent'. In relation to the reasonableness of the claimant's explanation, the First-tier Judge said this:

"9. Mr Maqsood, who represented the appellant, submitted that the fact that the appellant had submitted his passport to the Irish authorities in 2017 and did not receive it back until the EU residence permit was issued in June 2021 was manifestly capable of amounting to a reasonable ground and a far more significant ground than those identified by the respondent in the guidance, outlined above. The appellant could not have applied for a family permit to accompany his sister when she returned to the United Kingdom because this would not have been possible without his passport which was with the Irish authorities. As soon as the passport was returned to him with the residence card, he made the application which is the subject of this appeal.

10. I am persuaded by Mr Maqsood's submissions. I find that the fact that the appellant's passport was with the Irish authorities prevented him from applying for a family permit by the specified date and that this constitutes a reasonable ground for failing to meet the deadline."
17. The First-tier Judge was satisfied to the civil standard of balance of probabilities that the claimant 'met or meets the requirements of [the] Withdrawal Agreement' and allowed the appeal.
18. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

19. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Lesley Smith in the following terms:

"3. I do not understand the Judge to have found that the Appellant could meet the Withdrawal Agreement. As I understand the Judge's conclusion, this was that the Respondent's decision was contrary to the EU Settlement Scheme ("EUSS"). However, the Judge has arguably failed to explain how the Appellant could meet the Rules relating to EUSS (Appendix EU).

4. Judge Cartin indicated in the [First-tier Tribunal] refusal of permission to appeal that the issue between the parties was only whether there were reasonable grounds for the Appellant's failure to return to the UK with the Sponsor before 31 December 2020. However, as I understand the parties' respective positions as set out in the decision under appeal, the Respondent's second review and the Appellant's skeleton argument(s), the issue went wider than this and entailed consideration whether the Appellant had a relevant document which would entitle him to succeed under the EUSS. The Respondent made clear in the second review decision that the original grounds for refusal were maintained and asserted that the

Appellant's skeleton argument did not deal with all the issues raised in the decision under appeal.

5. It is therefore arguable that the Decision failed to address all the issues raised and failed to explain how the Appellant could meet Appendix EU. I acknowledge that, when reaching this decision, I did not have before me the directions made by the First-tier Tribunal at CMR stage nor the Respondent's first review and the parties should ensure that those are available to the Judge dealing with error of law should those be said to be central to the issues to be determined."

20. There was no Rule 24 Reply on behalf of the claimant.

21. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

22. The oral and written submissions at the Upper Tribunal hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.

23. For the Secretary of State, Mr McVeety relied on his grounds for review and argued that the decision of the Court of Appeal in *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921 (31 July 2023) is determinative of this appeal. The claimant could not meet the requirements of Appendix EU and the appeal should have been dismissed.

24. For the claimant Mr Chohan relied on the skeleton argument for the First-tier Tribunal and observed that the Secretary of State had been given time for a review of her decision. The decision of the First-tier Tribunal was open to it and should not be disturbed.

Conclusions

25. I remind myself of the decision in *Celik*. In the Court of Appeal, Lord Justice Lewis, with whom Lord Justices Moylan and Singh agreed, emphasised the need for an applicant to show that they had made an application for facilitation and residence, where they did not already possess an EEA residence card or other relevant document. Where no such application had been made before the specified date (31 December 2020), then there was no facilitation and the EUSS application cannot succeed.

26. That is the factual situation here. The claimant applied for facilitation in the Republic of Ireland and waited there until the outcome of his Irish EUSS application. He was not even present in the UK on the specified date and his UK EUSS application was not made until over 6 months after that date.

27. The First-tier Judge erred therefore in accepting that the only issue for the Tribunal was whether the claimant had shown reasonable grounds for his failure to return to the UK before the specified date of 11 p.m. on 31

December 2020. The issue for the Tribunal was whether the claimant could meet the requirements of Appendix EU. He could not meet the documentary requirements, he was not present in the UK on the specified date, and he made no application for facilitation before that date.

28. Accordingly, he is not a person who can benefit from the Withdrawal Agreement and this appeal should have been dismissed.

Notice of Decision

29. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Judith Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 7 October 2024