



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

Case No: UI-2024-002930

First-tier Tribunal No: EA/03127/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 24 December 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**KULDEEP SINGH**  
**(no anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 16 December 2024**

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his application under the EU Settlement Scheme (EUSS).

2. The appellant is a national of India born on 9 March 1988. He made an application, on 20 February 2023, under the EU Settlement Scheme (EUSS) on the basis of his relationship to an EU national. His application was refused on 18 July 2023 on the grounds that the respondent was not satisfied that he met the eligibility requirements for settled or pre-settled status as he had failed to provide any evidence to confirm that he was resident in the UK prior to the specified date of 31 December 2020 and that he was currently completing a continuous qualifying period of residence in the UK.

3. The appellant appealed against the respondent's decision. The appeal was decided on the papers before the First-tier Tribunal without an oral hearing, at the appellant's request. In a decision promulgated on 9 May 2024, First-tier Tribunal Judge Hussain

dismissed the appeal. The judge noted that the documents provided by the appellant showed that he had a child born to him and the child's mother, Violeta Ivascu, a Romanian national, on 9 October 2023, and that he had stated in his application form that he arrived in the UK on 5 December 2019. The judge was satisfied that there were transactions shown in the appellant's bank statements for dates in December 2020. He considered, however, that it was not sufficient for the appellant to show that he was physically in the UK before 31 December 2020, but that he had to show that he was in a relationship with his EU national partner before that date, which he had not done. On that basis he considered that the appeal fell to be dismissed.

4. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the bank transactions showed that he was in the UK in December 2020.

5. Permission was initially refused in the First-tier Tribunal, but was then granted in the Upper Tribunal. The basis of the grant was that the judge had arguably failed to consider the appellant's marriage certificate, in his appeal bundle, which showed that he was married to his EU sponsor on 19 February 2020, but that in any event the respondent had not disputed the marriage. The sole ground of refusal related to whether or not there was evidence of the appellant being resident in the UK prior to the specified date which the judge appeared to have accepted.

6. The respondent did not issue a rule 24 response.

7. The matter was then listed for hearing before myself. For the hearing, the appellant filed and served a bundle which included further copies of his bank statements which had been before the First-tier Tribunal, which he had highlighted as showing cash withdrawals from ATMs and cash deposits made at the bank in Manchester in December 2020. In a 'Final Disposal Request' the appellant submitted that that was evidence that he was in the UK up to and at the specified date.

8. Neither the appellant nor the sponsor appeared at the hearing. The appellant explained, in the 'Final Disposal Request', that his wife was currently experiencing hyperemesis due to a new pregnancy and was also caring for a one-year old child and was therefore unable to attend the hearing. He requested that the Tribunal determine the matter on the documents already provided.

9. Mr Tan helpfully conceded the appeal, accepting that the appellant had produced evidence of deposits and withdrawals made at the relevant time and that the requirements of the immigration rules had therefore been met. He conceded that the judge had made an error of law and that the decision should be set aside and re-made by allowing the appellant's appeal.

## **Analysis**

10. The sole basis for the respondent's refusal of the appellant's application under the EUSS was the absence of evidence that he was resident in the UK in the months leading up to, and including 31 December 2020. As the grant of permission properly indicates, Judge Hussain appeared to accept that such evidence had now been provided, but he dismissed the appeal on a completely different basis, namely an absence of evidence of the appellant's relationship with his EU spouse subsisting at that time. Not only was that a matter which the respondent had not disputed, but there was also evidence before the judge of the appellant's marriage to his EU spouse on 19 February 2020 which had not been challenged by the respondent.

11. Judge Hussain clearly erred in law by dismissing the appeal on a basis which was not relied upon by the respondent as a reason for refusal of the appellant's application and for which there was, in any event, evidence before him. As Mr Tan conceded, the decision has therefore to be set aside. Accordingly I set aside Judge Hussain's decision for that reason.

12. On the basis of the documents produced showing the withdrawals and deposits made at a bank in Manchester in the month leading up to the specified date, and given the unchallenged finding made by Judge Hussain at [9] in which he accepted the evidence of the bank transactions at the relevant time, Mr Tan accepts that the requirements of the immigration rules in Appendix EU have been met.. Accordingly, there being no other issues of concern to the respondent, I re-make the decision by allowing the appellant's appeal on the grounds that the respondent's decision was not in accordance with the EU Settlement Scheme rules.

### **Notice of Decision**

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. Judge Hussain's decision is set aside. I re-make the decision by allowing the appellant's appeal.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

16 December 2024