IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003274

First-tier Tribunal No: EU/51334/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of December 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

CACHEIRO ALONSO CESAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Unrepresented
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 5 November 2024

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Reed ("the Judge"), promulgated on 9 June 2024. By that decision, the Judge dismissed the Appellant's appeal against the decision of the Secretary of State to refuse his application under the EU Settlement Scheme ("EUSS") for settled status or pre-settled status.

Factual background

2. The Appellant is a Spanish national. He began living and working in the United Kingdom ("UK") in 2018, left the UK in March 2020 and did not return to the UK until June 2022 whereupon he made his

application under the EUSS. The Appellant's case is that he had intended to return to the UK in June 2022 but his flight was cancelled due to Covid-19. Thereafter, his return was delayed because (i) he had been seriously injured in a road traffic accident and (ii) had contracted Covid.

3. The Respondent refused his application having concluded that the Appellant, by reason of his absence from the UK, had neither completed a continuous qualifying period of residence of five years nor was he currently completing a continuous qualifying period of residence.

The decision of the Judge

4. At the request of the Appellant, the hearing was conducted on the papers.

5. The Judge made the following findings of fact:

(1) The Appellant's period of qualifying residence commenced in February 2018 [22] and, given that he accepted he did not return to the UK until 7 June 2022, he was absent from the UK for a period of around two years and three months [23].
(2) Insufficient evidence had been submitted to demonstrate the extent to which the Appellant's return had been delayed by flights being cancelled due to Covid-19 [24].
(3) Insufficient evidence had been submitted to demonstrate the extent to which the Appellant's return had been delayed by reason of a traffic accident [26] and/or having contracted Covid-19 [25].

6. Having reminded himself of the definition of "continuous qualifying period" in Annex 1 to Appendix EU [19], the Judge concluded that the Appellant's period of qualifying residence was broken by the absence between March 2020 and June 2022 such that he did not meet the requirements of the Immigration Rules [29].

The grounds of appeal and grant of permission

7. The grounds of appeal were uploaded onto the FtT electronic file (CCD) on 24 June 2024. The Appellant submitted that the Home Office guidelines set out that it was possible to apply for pre-settled status after the deadline provided there are justifiable reasons and the appellant outlined the reasons for his appeal, referring to the incidents that had occurred to prevent his return to the UK and the relevant documentation.

8. Permission to appeal was granted, on 12 July 2024, by First-tier Tribunal Judge Kudhail, who stated:

> The decision does not set out the legal frame work (sic) and limited reference is made to the applicable definition of continuous residence. The grounds argue that the Judges (sic) approach is wrong in law as the relevant date is the specified date and not the date of application, as contained within the definition. The grounds are arguable.

9. Notwithstanding what was stated in the permission to appeal, following an adjournment, the grounds were helpfully legally summarised by Upper Tribunal Canavan in her adjournment notice of 26 September 2024. Two grounds are pleaded:

(1) The First-tier Tribunal erred in applying the requirements of Appendix EU, particularly the exception in paragraph (b)(i)(ee) of Appendix 1. The Judge should have considered whether the 'absence exception' applied.
(2) The First-tier Tribunal was wrong to consider whether the Appellant had resided in the UK for a continuous period beginning from before the specified date and ending on the date of application. To qualify under Condition 1 of paragraph EU14, the Appellant was required to demonstrate that he had a continuous qualifying period until the specified date, not the date of application.

Upper Tribunal hearing

10. The Appellant was self-represented. The previous listing of this appeal before Upper Tribunal Judge Canavan had resulted in an adjournment in order to allow the Appellant time to seek legal advice. We raised the issue of legal advice with the Appellant. He explained that he could not afford to pay for legal advice and he therefore did not request a further adjournment. In the circumstances and in the light of the overriding objective under The Tribunal Procedure (Upper Tribunal) Rules 2008, we consider it would be fair to proceed with the hearing

11. We reviewed the decision of the Judge with the Appellant in order to assure ourselves that he understood it. We then explained to him the purpose of the hearing and the issues that we would be considering. Thereafter, the Appellant explained to us the factual circumstances which led to him leaving the UK and the reasons why he did not return until June 2022.

12. Mr Terrell submitted, with reference to Annex 1 of Appendix EU, that the Judge had correctly identified and applied the relevant provisions and further, that there is no error in the Judge's approach to the evidence. We are grateful to Mr Terrell for the clarity of his submissions.

Discussion and conclusions

Review of the legal framework

13. EU11 sets out the eligibility requirements for indefinite leave to enter or remain and EU14 the corresponding requirements for limited leave to enter or remain. Insofar as is relevant to the issues in this appeal, the former requires the Appellant to have completed a continuous qualifying period of residence of five years by the date of application and the latter that the Appellant be in the process of accruing a continuous period of residence of five years at the date of application.

14. "Continuous qualifying period" is defined in Annex 1. It requires the period of residence to have commenced before the specified date and, in (b), defines when a period of absence will/will not break continuity of residence. Insofar as is relevant to this appeal, the rules ((b)(i)) provide that the applicant must not have been absent from the UK for more than a total of six months in any 12-month period except in the following circumstances:

(1) a single period of absence which did not exceed 12 months and was for an important reason such as serious illness or because of Covid-19 (aa); or

(2) a single period of absence which did not exceed 12 months and which, although not originally for an important reason, is to be treated as being for an important reason as it exceeded six months because of Covid-19 (bb); or
(3) following a single period of absence which did not exceed 12 months and which was because of Covid-19 or exceeded 6 months because of Covid-19, a second period of absence which did not exceed 12 months and was for an important reason but not due to Covid-19. In these circumstances, a period of absence exceeding six months will not count towards the period of residence (cc); or
(4) following a single period of absence which did not exceed 12 months and was for an important reason but not due to Covid-19, either a second period of absence which did not exceed 12 months and was because of Covid-19, or a single period of absence which did not exceed 12 months and which, although not originally for an important reason, is to be treated as being for an important reason as it exceeded six months because of Covid-19 (dd); or
(5) a period of absence as set out above but which exceed 12 months because Covid-19 meant that the person was prevented from, or advised against, returning earlier. In these circumstances, the period of absence exceeding 12 months will not count towards any period of residence.

Ground 1

15. As stated above, the Judge correctly directed himself at [19] to the definition of "continuous qualifying period". We have considered whether his reasoning discloses that he misunderstood or misapplied this definition. However, given the findings of fact, the Judge was bound to conclude that the continuity of residence had been broken by the period of absence between March 2020 and June 2022. No other conclusion could properly have been reached. It follows that we conclude that the Judge did not err as pleaded in ground 1.

16. We are mindful that the Appellant's main concern as expressed to us was his view that the evidence he had submitted was sufficient to demonstrate that he met the requirements of the rules. We have reviewed the evidence that was before the Judge and can see no error in his approach or his conclusion. The judge set out as identified above in the findings and specifically from [24] onwards why he considered there was insufficient evidence to demonstrate the reasons for the Appellant's absence from the UK in the relevant period. Thus any 'absence exception' was not sustainable on the part of the Appellant. The limitations of the evidence adduced by the Appellant were such that the findings of the Judge were open to him.

Ground 2

17. This ground is misconceived. The Judge did not take the specified date as the starting point for the qualifying period of residence. It is plain from his decision that he calculated the period of residence from February 2018 [29]. Insofar as this ground is suggesting that the Appellant was required to have demonstrated continuous qualifying residence of 5 years prior to the specified date, it is not only wrong but it is a submission adverse to the Appellant's case given there is no dispute that he did not commence residence in the UK until 2018.

Notice of Decision

18. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and so the decision stands.

C E Welsh

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 December 2024