



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

Case No: UI-2024-001732  
First-tier Tribunal reference:  
EA/03564/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 2 January 2025**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**ANTHONY OSAWARU OSAWARU  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Bates, Senior Presenting Officer  
For the Respondent: in person

Heard at Manchester Civil Justice Centre on 27 September 2024

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they respectively appeared before the First-tier Tribunal. The appellant sought settled or pre-settled status as a citizen of Spain. The respondent refused the appellant's application on the grounds that he had failed to prove that he was a Spanish citizen and that, even accepting that he is a such a citizen, that he had been continuously resident in the United Kingdom between January 2021 and August 2021. The judge allowed the appeal and the Secretary of State now appeals to the Upper Tribunal.

2. Before the Upper Tribunal, the appellant appeared as a litigant in person. Mr Bates, Senior Presenting Officer, appeared for the Secretary of State.
3. I find that the judge did err in law in her assessment of the evidence. the judge considered in detail the matter of the appellant's disputed nationality and found that, in the absence of a document verification report, the appellant's Spanish passport should be considered valid. However, on the issue of the appellant's continuous residence in the United Kingdom, the judge gave no clear reasons for accepting his evidence beyond commenting that, as he had been truthful as regards his nationality, his evidence as to residence shed be accepted. At [26] the judge wrote: 'As I have found the Appellant a truthful witness, he has explained that he has not spent more than a few days at a time outside the United Kingdom since he first arrived on the 21.12.2020. He is here with his partner and four children. He explained the children were at home initially as they struggled to access a school.' The judge has overlooked the need for the appellant, upon whom rested the burden of proof, to prove every aspect of his claim. The fact that the appellant might have told the truth regarding his nationality did not necessarily mean that he had adduced sufficient evidence to prove residence.
4. However, I have decided not to set aside the First-tier Tribunal's decision. The appellant attended court with documents, including broadband accounts for the period April-May 2021, which Mr Bates agreed indicated that the appellant had been resident as claimed. I told the appellant and Mr Bates that, In the circumstances, I did not intend to set aside the First-tier Tribunal's decision notwithstanding the judge's error. Mr Bates made no objection to that proposed course of action.
5. Accordingly, I direct that the decision of the First-tier Tribunal promulgated on 23 January 2024 shall stand.

### **Notice of Decision**

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The First-tier Tribunal erred in law. However, I exercise my discretion to refrain from setting aside the Tribunal's decision and I direct that the decision shall stand.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 20 December 2024**

