



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Case No: UI-2022-
003400**
UI-2022-003401
First-tier Tribunal No:
EA/16493/2021
EA/02878/2022

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 16 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE B. KEITH

Between

ROCCO MITCHELL JOSEPH
JEMMA DANTE JOSEPH
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Mr Claire, Counsel instructed by RP Singh Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are Irish citizens who, having entered the UK on 22 May 2021, applied on 9 June 2021 for pre-settled status under the EU Settlement Scheme. The applications were refused. The appellants appealed to the First-tier Tribunal where their appeal came before Judge of the First-tier Tribunal Kinch (“the judge”). In a decision promulgated on 21 June 2022, the judge dismissed the appeal. The appellants are now appealing against this decision.
2. The judge stated that in order to fall within the definition of a “relevant EEA citizen” in Appendix EU of the Immigration Rules and thereby be eligible for limited leave under EU14 of Appendix EU, an EEA citizen must have entered the UK prior to 31 December 2020. The judge found that the appellants could not succeed under Appendix EU because they entered the UK after 31 December 2020.
3. The judge also found that the decision to refuse to grant the appellants leave did not breach the EU Withdrawal Agreement as the appellants were not residing in the UK prior to 31 December 2020. The judge stated that the wording of Article 10(1)(a) confirms that the EU Withdrawal Agreement only applies to Union citizens who exercised a right of residence prior to the end of the post EU exit transition period (i.e. 31 December 2020).
4. The judge also stated that, as Irish citizens, the appellants enjoy a right to reside in the UK under the Common Travel Area (“CTA”) irrespective of whether they are entitled to leave under Appendix EU.
5. Two arguments are advanced in the grounds of appeal. The first ground submits that the judge failed to consider the respondent’s guidance on late applications: EU Settlement Scheme: information for late applications, which was last updated on 16 July 2021 (“the late applications guidance”). It is submitted in the grounds that the appellants have a very strong explanation as to why they were unable to arrive in the UK prior to 31 December 2020 and the judge fell into error by failing to consider whether, in the light of these reasons, the late applications guidance was applicable.
6. The second ground of appeal submits that the judge’s decision contradicts the CTA, as well as the Memorandum of Understanding (“MOU”) between the UK and Irish governments, in respect of the long-standing reciprocal rights and privileges between the UK and Ireland.
7. At the hearing, after hearing submissions from Mr Claire, we informed Mr Whitwell that we would not need to hear from him.

8. The “personal scope” of the EU Withdrawal Agreement is set out in Article 10. Article 10(1)(a) states that the Citizens’ Rights provisions of the EU Withdrawal Agreement apply to:

“Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law **before the end of the transition period** and continue to reside there thereafter”
[Emphasis Added]

9. The difficulty for the appellants is that the wording of Article 10(1) (a) makes clear that only Union citizens who exercised a right to reside in the UK prior to 31 December 2020 are within the scope of the EU Withdrawal Agreement. As the appellants did not exercise a right to reside in the UK prior to 31 December 2020, they plainly do not fall within the personal scope of the EU Withdrawal Agreement. Mr Claire was unable to identify any provision of the EU Withdrawal Agreement that would entitle us to override (or depart from) the clear wording of Article 10(1)(a) as to the EU Withdrawal Agreement’s scope.

10. The late applications guidance is of no assistance to the appellants because it concerns applications made by people who may otherwise have been eligible under the EU Settlement Scheme who make a late application. The appellants, however, have not made a late application; rather, they have made an application that, irrespective of whether or not it was made on time, could not succeed because a necessary condition under Appendix EU (residing in the UK on 31 December 2020) was not met.

11. We also do not consider there to be any merit to the second ground of appeal, where it is submitted that the decision is contrary to the CTA and MOU. As the judge noted in paragraphs 34 and 35, the CTA and MOU provide for reciprocal rights and privileges predating and unaffected by the EU Withdrawal Agreement and the appellants’ right to live in the UK under the CTA is unaffected by the decision to refuse them leave under Appendix EU. The appellants, as Irish citizens, did not need to apply under the EU Settlement Scheme, but having done so their applications fell to be decided in the same way as would be applications made by citizens of other EU countries.

Notice of Decision

12. The appeal is dismissed. The decision of the First-tier Tribunal stands.

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EA/02878/2022

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 12 December 2022