



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-

002761

First-tier Tribunal No:
EA/10695/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th October 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ASAD ASAD
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representative (the Sponsor attended)

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 20 September 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Latta ("the Judge"), promulgated on 9 May 2023. By that

decision, the Judge dismissed the Appellant's appeal against the Respondent's refusal of his EUSS family permit application. That application was based on the Appellant's claimed residence with his sister and her British citizen husband ("the Sponsor") in Spain between March 2020 and December 2020. The Respondent was not satisfied as to the relationship between the Appellant and the Sponsor, was not satisfied as to the evidence of the Sponsor's employment and self-employment in Spain, and was not satisfied that the Appellant had in fact resided with the Sponsor during the period in question.

Decision of the First-tier Tribunal

2. The Appellant elected to have his appeal decided without a hearing. There is no suggestion that that request was made on anything other than an informed basis. The Appellant sent in a bundle of documents comprising 130 pages, together with certain other documents.
3. In a relatively brief decision, the Judge made the following findings. He accepted that the Appellant was the brother-in-law of the Sponsor: [11]. The Judge noted the absence of certain evidence in relation to the Sponsor's employment and/or self-employment in Spain, but did not make a clear finding to that effect, although the inference is that those circumstances were not accepted: [13].
4. Of greatest significance in this appeal is the Judge's finding at [15]. He made reference to residence registration certificates contained in the Appellant's bundle (one naming the Appellant and the other naming the Sponsor), considered these documents, and then found that "...it is not sufficient to establish that the Appellant was residing in Spain with the Sponsor from March to December 2020".
5. The appeal was accordingly dismissed.

The grounds of appeal

6. The Appellant, who has not been legally represented throughout, obtained some assistance from his brother-in-law in drafting concise and clear grounds of appeal. In essence, the grounds of appeal assert that the Judge failed to appreciate the importance of the residence registration certificates. In Spain, such a document was compulsory and proved residence. The grounds also asserted that the Appellant had been financially dependent on the Sponsor.
7. Permission was granted by First-tier Tribunal Judge Cartin by a decision dated 12 June 2023. Judge Cartin deemed it to be arguable that the Judge had failed to give any or any adequate reasons for rejecting the residence registration certificates.

The hearing

8. At the hearing, the Sponsor attended and provided helpful comments on the evidence and the Judge's decision. Mr Lindsay's concise submissions were to the effect that on the evidence before him, and in the absence of further explanation as to the position in Spanish law, the Judge was entitled to find that the registration certificate relating to the Appellant was not sufficient to show his residence with the Sponsor for the period March to December 2020.

Conclusions

9. Having considered the evidence and the Judge's decision with care, I conclude that there are no errors of law in this case which could have made a difference to the outcome.
10. I do accept that there was some evidence relating to the Sponsor's employment in Spain and the Judge did not engage with this. Even if I were to regard this as an error, it is immaterial to the outcome of this appeal. That is because the Judge was entitled to conclude that the residence registration certificate relating to the Appellant was not sufficient to establish the claimed residence in Spain for the relevant period of time. The Judge could not have been expected to appreciate

the importance of such a document under Spanish law; he did not have any guidance or other materials on the issue. The Judge did not of course have the benefit of any oral evidence at a hearing. In addition, there is merit in Mr Lindsay's submission that the certificate itself confirms a start date but does not say anything more than that.

11. I have considered a further possible point. Two additional dates are included in the registration certificate: 30 July 2021 and 7 January 2020. These dates might possibly signify when the certificates were issued or perhaps re-issued. However, as far as I can see, there was no evidence before the Judge to assist him with discerning what, if any, significance those dates had. Further, or in any event, the fact that there were two different dates on the certificates clearly raised questions; questions which were not answered by any other form of explanatory evidence.
12. There was no other evidence of the Appellant's residence aside from this certificate. It may have been difficult for other formal documents to have been obtained given the Appellant's lack of status in Spain. However, the Judge could reasonably have expected evidence from, for example, other family members or photographs, or such like in support of the appeal. Even leaving this aside, the Judge was, in my judgment, entitled to reach the conclusions he did on the evidence which was available.
13. Whilst one may have some sympathy for the Appellant and a different Judge might have made a different decision, my task at this stage is to decide whether the findings made by the Judge were reasonably open to him, not whether I would have made the same findings. In my judgment, the central finding on residence was indeed open to the Judge. This means that he was entitled to dismiss the appeal. It also means that the Appellant's appeal to the Upper Tribunal must be dismissed.

Anonymity

14. There is no justification for an anonymity direction in this case.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law.

The decision of the First-tier Tribunal stands.

The appeal to the Upper Tribunal is accordingly dismissed.

**H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 4 October 2023**