



IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Appeal Number UI-2023-003029
First-tier Tribunal No: EA/06897/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd October 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

REYHANE GOLJIEN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, Counsel, instructed by City Law Immigration Ltd.

For the Respondent: Ms S Lecointe, Senior Presenting Officer

Heard at Field House on 18 September 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Moffatt ('the Judge') dismissing her appeal against the respondent's refusal to grant her pre-settled status under Appendix EU of the Immigration Rules. The respondent's decision is dated 19 May 2022.
2. The First-tier Tribunal's decision was sent to the parties on 19 June 2023.

Brief Facts

3. The appellant is a national of the Netherlands and is aged 38. She states that she arrived in the United Kingdom in August 2018 and has resided here since that date. Whilst in the United Kingdom she continues to manage remotely her businesses in the Netherlands.
4. Following her arrival in this country she resided with a friend in North London for several months before securing the tenancy of a property in spring 2019. By April 2019 she was undertaking professional courses in the United Kingdom. In August 2020 she was shadowing Dr Razvan Vasilas at The Botox Shop, Wigmore Street, London. She was engaged at this business from 1 August 2020 until 1 November 2020 and then from 1 May 2021 until 15 December 2021.
5. Between March 2021 and mid-April 2021, she travelled to the Netherlands to assist with the country's pandemic efforts as she is medically trained. However, she returned to the United Kingdom in mid-April 2021.
6. She applied for pre-settlement leave under the EUSS by an application dated 3 January 2022. The respondent refused the application by a decision dated 19 May 2022 observing, *inter alia*:

'Consideration has been given as to whether you qualify for pre-settled status on the basis of completing a continuous qualifying period of less than five years' residence in the UK and Islands. ... you do not meet the requirements ... because whilst there is evidence that you have resided in the UK between December 2018 and September 2021 you have not provided sufficient evidence to confirm that you are currently completing a continuous qualifying period of residence in the UK and Islands.

This is because the most recent evidence of you being resident in the UK and Islands is September 2021. As this is more than six months before you submitted your application, it appears that your continuous qualifying period of residence has been broken and has not been resumed.

We attempted to contact you numerous times by email, telephone and text between 14 April 2022 and 9 May 2022 to ask for the information/evidence specified above, but this has not been provided.'

7. The appellant exercised appeal rights upon receiving the respondent's decision.

The First-tier Tribunal Decision

8. The appeal came before the Judge sitting at Hatton Cross on 10 May 2023. The appellant attended and gave evidence.

9. An appeal skeleton argument (ASA), dated 26 April 2023, was prepared by the appellant's solicitors, detailing:
- '1. The Immigration Rules Appendix EU entitle Appellant to apply under EUSS scheme for settled status or pre-settled status depending upon the period of continuous time completed in the UK by the Appellant.
 2. We submit that the Appellant applied under the EUSS scheme on the 3rd January 2022 based on her living in the UK. The Appellant has resided in the UK since 2018 to the present date and has travelled back and forth between the UK and the Netherlands for purposes of work. She wishes to obtain pre-settled status/Settled status in the UK as a qualifying person in the UK under Appendix EU as she is a European National and has been living in the UK for 5 years and qualifies for the same.
 3. The Appellant provided various documents to support her stay in the UK, but the documents were not accepted by the SSHD as evidence to support her living in the UK. We attach further evidential proof of her residence in the UK from 2018 to the present date and confirm that the Appellant meets the requirements under Appendix EU for the EUSS scheme and she should therefore be granted the same.
 4. The Appellant's partner, who is also a European National is also resident in the UK and therefore she remains in the UK more than she does in Netherland (sic), but is required to travel for the purposes of her work.'
10. As recently confirmed by the Upper Tribunal in *TC (PS compliance - "issues-based" reasoning) Zimbabwe* [2023] UKUT 00164 (IAC) appellants are to file focussed ASAs identifying the principal important controversial issues to be considered by a judge. This document possesses a cut and paste nature, with the appellant later being referred to as a male at paragraph 6. A further failure of the document is the assertion that the appellant had resided in the United Kingdom for five years and sought settled status, despite on her own case the appellant entering the United Kingdom in August 2018 and not at that time satisfying the five-year residence requirement. I conclude that this document did not aid the Judge.
11. Several documents were filed and served by the appellant, including:
- A certificate of attendance at a course held by The Medical and Aesthetic Training Academy at Harley Street on 15 December 2018 covering foundation training requirements when using Botulinum toxin and its applications;
 - A certificate of attendance at a course held by The Medical and Aesthetic Training Academy at Harley Street on 16 December 2018 concerned with dermal fillers and its applications;

- An undated letter from Dr Vasilas confirming that the appellant shadowed him at The Botox Shop from 1 August 2020 until 1 November 2020;
- A certificate of proficiency in the field of PDO (thread lifting), basic and advanced level, issued by Tara Beauty School, dated 6 June 2021;
- A second undated letter from Dr Vasilas confirming that the appellant shadowed him from 1 May 2021 until 15 December 2021;
- A certificate of continuing professional development in PRP therapy at The Botox Shop London, dated 2 September 2021.
- Various council tax documents.
- An assured shorthold tenancy agreement commencing 28 April 2019.
- An assured shorthold tenancy agreement commencing 1 April 2020.
- An assured shorthold tenancy commencing 28 April 2020.

12. At [14] of the decision, the Judge noted:

‘14. In submissions for the appellant, Mr Youseffian [Counsel for the appellant] submitted that I have to be satisfied that the appellant was in the UK before the specified date and then be satisfied that the appellant has not been outside of the UK for a period in excess of six months in each 12 month period. It was submitted that Dr Razlan’s evidence was not challenged. This evidence demonstrates the appellant was in the UK from January 2021 until January 2022 other than for the period of six weeks when the appellant was in the Netherlands.’

13. At [15] of the decision, the Judge noted that the respondent, represented by Mr Iqbal, Counsel, at the hearing, had not made any challenge to the veracity of the documents relied upon by the appellant.

14. The Judge’s conclusion are at [16] to [20] of the decision:

‘16. I have considered the documents submitted. The appellant’s witness statement can best be described as sparse. I have considered the documentary evidence very carefully. The appellant stated in her oral evidence that she had been residing in the UK since August 2018. There is no evidence of residence in the UK at that time. The appellant has provided two certificates for one day courses on 15 and 16 December 2018. The tenancy agreement signed by the appellant in April 2019, when she states that she decided she did want to live in the UK, shows her address

as an address in the Netherlands, not an address in Cricklewood where she said in her oral evidence she had been staying.

17. Within the appellant's bundle, there are tenancy agreements covering the period April 2019 until April 2021. I have seen no evidence that rent on those properties was being paid. The appellant has not provided any work-related evidence to demonstrate she was living in the UK or bank statements showing purchases on a regular basis in shops in the UK.
18. In conjunction with those, there are Council Tax reminder notices for the tax years 2020-2021, 2021-2022 and 2022-2023. There is a summons for non-payment of council tax. In the most recent Notice, the document notes that £2,809 is outstanding from previous years. Ordinarily, it might be expected that the payments would be deducted automatically from a bank account. I have seen no evidence that the appellant has a UK bank account. That payments were missed suggests that the appellant was not present in the UK to make the monthly payments. That the non-payment required court proceedings for a liability notice and that arrears of £2,809 had accrued suggests that the appellant was not residing in the UK.
19. The letters confirming attendance on a shadowing course written by Dr Razvan Valias do not say that daily attendance was required throughout the period. They state that the course was completed and that the appellant followed a shadowing programme. The period of shadowing has not been specified.
20. The burden is on the appellant. Even if no challenge is made by the respondent to the veracity of the documents, they do not, in my judgement, demonstrate on the balance of probabilities that the appellant was living and studying in the UK since 2018 nor that she was living in the UK at the specified date or that she was living in the UK for the period leading up to her application for settled status.'

Grounds of Appeal

15. The appellant relies upon grounds of appeal prepared by Mr Youseffian, which are primarily founded upon procedural irregularities in respect of findings of fact made by the Judge in circumstances where the respondent had not challenged the veracity or provenance of any evidence relied upon by the appellant. I observe paragraphs and 8 of the grounds:

- '3 ... The most significant procedural unfairness is that the SSHD's representative, counsel no less, did not challenge the veracity or provenance of any of the evidence contained in A's bundle or her oral evidence and yet, the FtTJ at §20 found that the evidence contained in the bundle did not demonstrate A's residence in the UK. None of the points which the FtTj raised in her decision were ever put to A or even raised during the course of the hearing as matters of concern. A was wholly deprived of the opportunity to

give an explanation or to address matters which were never brought to her attention.

...

- 8 ... at §19, regarding the letters from Dr Razvan also were not challenged by the SSHD nor the FTtj. Whilst the FTtj is correct that the letters did not directly state that daily attendance was required throughout the period, A was not asked any questions regarding this letter. Her evidence, as recorded by the FTTJ, was that she had been in the UK throughout from her time with Dr Razvan in August 2020 ... until March 2021. The implication of A's evidence is that A was in the UK throughout her shadowing course. If this was going to be called into question, it was procedurally necessary to directly put it to A. The failure to do so was procedurally irregular and it caused A unfairness.'

16. Judge of the First-tier Tribunal Monaghan granted permission to appeal by a decision dated 12 July 2023, observing:

- '2. The Judge has arguably made a perverse or irrational finding in relation to the non-payment of Council Tax being an indicator that the Appellant was outside the United Kingdom. It is noted that people fall into arrears in respect of this outgoing, but it does not mean that they are outside the United Kingdom; for differing reasons they may have an inability to pay.
3. The Judge has also arguably failed to put material matters to the Appellant as set out in the grounds and therefore there has arguably acted in a procedurally unfair way.
4. The other grounds whilst less cogent are still arguable.'

Discussion

17. At the outset of the hearing Ms Lecointe accepted that the decision of the Judge was infected by two clear material errors of law. Firstly, it was accepted that various points of concern raised by the Judge in her decision were never put to the appellant or raised in submissions as being matters of concern. It was therefore accepted that the appellant had been deprived of an opportunity to address matters of concern and this constituted procedural unfairness. Additionally, it was accepted that the weight given to the non-payment of council tax was unsustainable in circumstances where the appellant was not given an opportunity to explain such non-payment. The respondent agreed that the decision of the Judge should be set aside in its entirety.
18. Both representatives were content that the hearing proceed straight into a resumed hearing.
19. Whilst the respondent did not concede the appeal, Ms Lecointe adopted a realistic approach to the documentary evidence relied upon by the appellant, noting that it had not been challenged by the respondent before

the First-tier Tribunal. Ms Lecointe acknowledged that this was not a case where the respondent's position is that the appellant had not been present in the United Kingdom when this country left the European Union on 31 December 2020. Rather, the decision of June 2022 was solely focused upon whether there had been a six-months break in the appellant's continuous residence prior to her application. Ms Lecointe expressed concern as to the limited information provided by Mr Vasilas in his two letters. However, she accepted that the unchallenged evidence established that the appellant had been present in the United Kingdom up until at least two weeks before her application was made in January 2022, and so the six-month absence prior to the date of application identified by the respondent's decision letter could not be sustained.

20. In respect of a further concern raised by Ms Lecointe, I see no inconsistency in a certificate being issued to the appellant for completing a course at The Botox Shop on 2 September 2021 whilst he was shadowing at the same venue for several months. I am satisfied that she took the opportunity to undertake continuing professional development whilst engaged in shadowing.
21. I observe that the filing of additional, detailed, documentary evidence in this matter would have aided both the First-tier Tribunal and this Tribunal. However, the documents relied upon by the appellant were unchallenged before both Tribunals and when considered in the round they establish that the appellant was present in the United Kingdom on 15 December 2021, a matter of weeks before her application and the evidence can properly be considered as establishing that she was residing in this country at this time.
22. In the circumstances I am satisfied that the appellant has established that she arrived in the United Kingdom at a date in August 2018 and whilst she travelled back to the Netherlands on occasion, she continued to reside in this country up until the date of her EUSS application in January 2022. In those circumstances her appeal in respect of pre-settlement leave under Appendix EU must be allowed.

Decision and Reasons

23. The decision of the First-tier Tribunal sent to the parties on 19 June 2023 is set aside for material error of law.
24. The decision is re-made, and the appellant's appeal is allowed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2023