



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

Case No: UI-2023-003132

First-tier Tribunal No: EA/09200/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

20<sup>th</sup> December 2023

**Before**

**UPPER TRIBUNAL JUDGE OWENS**  
**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**Sherifat Hassan**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms M Chowdhury of Counsel, Daniel Aramide Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**Heard at Field House on 8 December 2023**

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria whose date of birth is dated 13<sup>th</sup> June 1969. On 14<sup>th</sup> September 2022 the Respondent refused the Appellant's application for settled or pre-settled status pursuant to the EU Settlement Scheme as the family member of a qualifying British citizen.
2. Not content with that decision, the Appellant appealed. Her appeal was heard on 9<sup>th</sup> March 2023 by First-tier Tribunal Judge Anthony sitting at Birmingham. It is of note that Judge Anthony had difficulty establishing when the application under appeal was made and also, it would appear, what the application was for. The chronology, insofar as it is possible to ascertain what occurred, suggests that multiple applications were made leading to decisions being made and withdrawn by the Respondent, although the Appellant was insistent that she only made one application. What does appear certain is the date of decision under appeal.

3. In the event, in a decision promulgated on 22<sup>nd</sup> March 2023 Judge Anthony did not find that the Appellant had made out her case because whilst she noted and accepted a period of lawful residence in Malta (an EU state) of one year to January 2015, and evidence in the form of P60s for 2018, 2019 and 2020 she did not have them for 2016, 2017, 2021 or 2022. In those circumstances she was not satisfied that the Appellant had discharged the burden of proving a continuous qualifying period of five years in order to qualify for settled status. Judge Anthony also found that the Appellant's husband could not demonstrate that he was a "qualifying British citizen" because he did not attend the appeal hearing and did not produce his passport or other evidence to demonstrate that he had not left the UK for over six months in any 12-month period nor that he had been resident in the UK for the same continuous qualifying period on which the Appellant relied.
4. Not content with that decision, by notice dated 4<sup>th</sup> August 2023, the Appellant made an application for permission to appeal to the Upper Tribunal. The grounds pointed to procedural unfairness on the part of the judge, in that it was contended that although the judge gave permission for additional evidence to be provided after the hearing and although additional evidence had been lodged with the Tribunal, having been sent on 14<sup>th</sup> March 2023, the judge had not had regard to it when making her decision.
5. At first instance, on 19<sup>th</sup> July 2023, Judge Gumsley refused permission. He did not accept the premise upon which the grounds were made. He was not able to find evidence of Judge Anthony having given permission for additional evidence to be served and found no application made by the Appellant for an adjournment nor for the matter for to go, "part heard".
6. By application dated 4<sup>th</sup> August 2023, permission to appeal was renewed before the Upper Tribunal on the same grounds, it being contended that Judge Gumsley had not engaged with those grounds. On 6<sup>th</sup> November 2023, Upper Tribunal Judge Francis granted permission on three arguable grounds:
  - (i) procedural unfairness;
  - (ii) inadequate consideration of pre-settled status even though not raised in the grounds; and
  - (iii) failure properly to consider the specific requirements for pre-settled status in condition 2 of EU14 to Appendix EU.

#### Ground 1

7. We were very grateful to Ms Chowdhury for the very professional manner in which she conducted this appeal. Judge Gumsley, in refusing permission, had noted the absence of any sufficient supporting evidence for the contention that permission had been granted by Judge Anthony for additional evidence to be adduced after the appeal. Directions had been sent out at an earlier stage by Upper Tribunal Judge Owens dated 29<sup>th</sup> November 2023 giving notice that this matter was before the Upper Tribunal, reminding the Appellant of the deadline and importantly at Order 10 under the Directions,

*“Both parties must attach to their skeletons their own record of proceedings before the First-tier Tribunal”.*

8. The purpose of that Order was to establish what support, if any there was for the contention that Judge Anthony had given permission for further evidence to be lodged after the appeal hearing as contended by the Appellant.
9. The Respondent in his skeleton argument disputed Judge Anthony ever having given such leave. There was no record of this in the Presenting Officer’s note. Ms Chowdhury recognised the Order at paragraph 4 of her skeleton argument but notwithstanding that Order, she was not provided with either a note of the proceedings by Counsel who represented the Appellant at the hearing before the First-tier Tribunal nor with a statement from Counsel. In the absence of this evidence all Ms Chowdhury was left with was a mention by the judge in the decision that the death certificate produced at the hearing should be uploaded onto the electronic case management system and no indication in the decision that the judge had given permission for the Appellant to produce further evidence that she had completed a continuous qualifying period of five years after the hearing.
10. Whilst not abandoning the ground, because she was without instructions which would permit her to do so, Ms Chowdhury informed the Tribunal that she intended to take the matter no further. She was quite right to do so. We had no difficulty whatsoever in finding no error of law since there was no sufficient evidence to support the assertion that there had been procedural unfairness. Ms Chowdhry also properly in our view conceded that the document that was produced after the hearing in relation to the Appellant’s employment came no-where near demonstrating that the Applicant met the residence conditions. We need say no more about that.

### Grounds 2 and 3

11. As to the second ground, which is really part and parcel of the third, being the question of consideration of pre-settled status, and the failure properly to consider the specific requirements for pre-settled status in condition 2 of EU14 to Appendix EU, we note that these grounds did not form part of the original grounds and were granted by the Upper Tribunal on the basis that this was an “obvious error” on the part of the judge.
12. Regardless of the rights or wrongs of permission being granted on this basis, the Tribunal took Ms Chowdhury through each and every part of the requirements for pre-settled status. Although the sponsor had been found to return to the United Kingdom before the required date with the Applicant, and although they were married, Ms Chowdhury eventually, but again quite properly, conceded that insofar as it was necessary to be satisfied that there had been a continuous qualifying period in which the Sponsor in the United Kingdom met the definition at the EUSS of a “qualifying British citizen” which corresponded with the same period relied on by the Appellant and that there was insufficient evidence before the Tribunal to demonstrate this as appears at paragraph 28 of the decision and reasons.
13. Though Ms Chowdhury submitted bravely that, in fact, Judge Anthony ought to have come to a different view, she accepted that that did not mean that Judge Anthony had erred because she accepted that the finding that was made, being a

finding of fact, was one that was open to her. In those circumstances she accepted that she could not take the matter any further and accepted that in those circumstances inevitably, the ground would be dismissed as would the whole of the appeal.

**Notice of Appeal**

14. The appeal to the Upper Tribunal is dismissed on all grounds and the decision of the First-tier Tribunal shall stand.

A handwritten signature in black ink, consisting of stylized initials followed by a long horizontal stroke.

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12 December 2023**