IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001227

First-tier Tribunal Nos: EU/53337/2023
LE/00267/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

Alex Antzara
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms C Johnrose, Solicitor; Fusco Browne Immigration
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Field House on 19 June 2024

DECISION AND REASONS

1. This is the Secretary of State's appeal, but I shall refer to the parties as they were constituted before the First-tier Tribunal for ease of comprehension.

2. The Secretary of State appeals against the decision of First-tier Tribunal Judge Curtis promulgated on 2nd February 2024 allowing the Appellant's appeal, finding that he meets the requirements for leave to remain under Appendix EU. The Secretary of State appealed against that decision and was granted permission to appeal by Deputy Upper Tribunal Judge Chamberlain in the following terms.

> "3. I have carefully considered the grounds and decision. The judge set out that the issue in dispute was 'whether the appellant had commenced his continuous residence in the United Kingdom prior to 11pm on 31 December 2020' at [5(a)]. At [8] he stated that to succeed 'the appellant must show that he had commenced his period of continuous residence in the United Kingdom by 11pm on 31

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December 2020 and maintained this continuous residence at the date of application'. He was aware that the appellant had to show that he had maintained his continuous residence. While the respondent's review states that the issue was whether he had commenced residency, when going into detail on this issue, the review makes clear that reliance is placed on the decision, which specifically stated that the appellant had not provided evidence of continuous residence, and further states that the respondent would 'expect to see further evidence which demonstrates continuous residence in the UK'.

4. The issue of continuous residence was before the judge, and it is arguable that his reasoning on this point is inadequate, given the lack of evidence before him."

3. There was no Rule 24 response from the Appellant, but Ms Johnrose indicated that the appeal was resisted.

Findings

4. At the conclusion of the hearing I reserved my decision, which I now give. I find that there is no material error of law in the decision requiring it to be set aside.

5. In respect of the Secretary of State's grounds, as identified by Deputy Upper Tribunal Judge Chamberlain in granting permission the key issue raised by those grounds is whether or not the judge assessed the question of "continuous residence". I expressed to Ms Arif that I had difficulty in understanding the ground given that the rule in question, EU14, did not disclose any requirements in relation to "continuous residence". After verifying the content of EU14, Ms Arif submitted that the grounds appear to contain a typo, missed by all thus far, and that the relevant requirement should be read as whether the Appellant has established he has completed "a continuous qualifying period" of less than five years (as opposed to "continuous residence"). With that in mind I turn to the rule in question, to set out what it says in terms:

"**Eligibility for limited leave to enter or remain**

Persons eligible for limited leave to enter or remain as a relevant EEA citizen or their family member, as a person with a derivative right to reside or with a Zambrano right to reside or as a family member of a qualifying British citizen:

EU14. The applicant meets the eligibility requirements for limited leave to enter or remain where the Secretary of State is satisfied, including (where applicable) by the required evidence of family relationship, that, at the date of application, condition 1 or 2 set out in the following table is met:

Condition Is met where:

1. (a) The applicant is:

(i) a relevant EEA citizen; or

(ii) a family member of a relevant EEA citizen; or

(iii) a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen; or

(iv) a person with a derivative right to reside; or

(v) a person with a Zambrano right to reside; and

(b) The applicant is not eligible for indefinite leave to enter or remain under paragraph EU11 of this Appendix solely because they have completed a continuous qualifying period of less than five years; and

(c) Where the applicant is a family member of a relevant EEA citizen, there has been no supervening event in respect of the relevant EEA citizen."

6. First, it is not in dispute between the parties that the Appellant cannot meet paragraph EU11 of Appendix EU because he has not completed a continuous qualifying period of less than five years because he only entered the United Kingdom on 14th December 2020 and even now, at present date, has completed less than four years residence on that timescale.

7. Having set out EU14 above, it appears to me that the requirement under Condition 1(b) is for an Applicant to show that they are not eligible for indefinite leave under paragraph EU because they have completed a "continuous qualifying period of less than five years". I note in particular that the Rule in question does not stipulate, in any way, when the continuous qualifying period should begin, nor when it should end, which had it done, might have altered my interpretation of the rule.

8. Reading Condition 1(b) as a whole – and not piecemeal – as the drafter of the Respondent's grounds of appeal has done in support of their stance – it is clear to me that the rule does <u>not</u> require any continuous qualifying period to be established at the point of applying for Pre-Settled Status (having obtained leave to enter under Appendix EU (Family Permit)). Rather the requirement stipulates that EU14 will be met where an applicant is <u>not eligible</u> for indefinite leave to enter or remain <u>under paragraph EU11</u> <u>solely because</u> they have completed a continuous qualifying period of less then five years. Therefore, condition 1(b) is not canvassing whether an Applicant has fulfilled any particular, unspecified length of continuous qualifying residence but simply whether they are not eligible under EU11 for want of completing the five year period.

9. Therefore, in my view the Respondent's appeal is misguided and misconceived in suggesting that there is an evidentiary threshold to be met and that EU14 is asking Applicants to demonstrate a continuous qualifying period of an unspecified length.

10. As stated above, I note in particular that the Rule in question does not stipulate when the continuous qualifying period should begin and when it should end. Rather, if the Respondent were right in their reading of the rule, the length of residence that an applicant would need to establish would be a floating requirement, hanging impliedly in the ether, as it does not have a specified start or end date.

11. Even if this were so, and I am wrong in my understanding and reading of the Rule in no start or end date being specified, I find that the floating requirement itself is not qualified by any time markers through which one could argue that the judge has fallen foul of. I note that the issue outlined before the judge in the Respondent's review was whether or not the period of residence had begun before 31st December 2020. Notwithstanding that reliance was placed on the refusal letter, and albeit the refusal letter mentions the term "continuous qualifying period" in its consideration of the application, the focus and language of the refusal letter is clearly aimed at berating the *lack* of evidence sent with the application, rather than noting that the Applicant failed to meet a *substantive requirement*.

12. Even if I am wrong in that regard also, I find, in any event, that the judge has considered the overall issue of residence in their findings, as the judge finds, as they were entitled to, that the Appellant entered the United Kingdom on 14th December 2020 - only after having reviewed his flight tickets and accepting his oral evidence that he flew into the United Kingdom on that day. I pause to note that Ms Johnrose took me to the guidance for Appendix EU, which confirmed that, in certain instances, evidence of arrival that is acceptable to the Secretary of State will be something such as a used flight ticket, such as the judge had accepted here. Returning to my analysis the judge also accepted that the Appellant signed for a flat on the same day he arrived (i.e. 14 December 2020) and that the flight timings gave him time to do so and that the flat was owned by a company run by the same directors as those who were employing the Appellant in the United Kingdom; and that on balance, they had arranged his accommodation in advance of his travel, only requiring his signature upon arrival in order to commence his tenancy. The judge then finds that the Appellant commenced work for his employer, later in December 2020. These were findings that the judge was entitled to reach having examined the documents before him and having heard evidence from the Appellant.

13. The judge then explicitly considered whether there had been a break in the Appellant's "continuous residence" - or the continuous qualifying period, using the correct term - because he explicitly finds as follows:

> "…on the balance of probabilities…he commenced work for them in later December 2020, although he then had to leave the United Kingdom for a short period of a few weeks, well within the permitted time scales published in the respondent's guidance to avoid breaking continuous residence. He did this because he had entered the United Kingdom on a Greek/EU identity card and after 31 December 2020 he needed a passport to prove his right to work. I find that he returned briefly to Greece to obtain this passport, but this did not break his continuous residence. I therefore find that the appellant entered the United Kingdom before 31 December 2020 with the intention to commence continuous residence. I find that <u>he maintained that residence</u> at the time of the application and <u>continues to maintain it</u> to date".

14. For the avoidance of doubt, I was not asked to distinguish between "continuous residence" and "continuous qualifying period" and I find that the judge's finding on the one apply equally to the latter in considering the issue in this appeal as distilled by the Respondent's review.

15. Again, all of the above findings were open to the judge to make, having heard evidence from the Appellant and having considered the documentary evidence

before them. I also note from Ms Johnrose, which Ms Arif also did not take issue with, that the guidance on Appendix EU published on 4th April 2024 contains a section headed "Qualifying residence – continuous qualifying period" at pages 160 through to 171 which does not contain any mention of a substantive requirement to demonstrate a continuous qualifying period for paragraph EU14 of Appendix EU of less than five years when attempting to meet that rule. Rather the guidance is devoted, it seems entirely, to paragraph EU11 of Appendix EU which both parties agreed cannot be met by the Appellant here because he has not fulfilled the requirement of five years' continuous qualifying period. Therefore, even the guidance assisting those considering Appendix EU applications contains no reference to EU14 in the context of the requirement of "continuous qualifying period".

16. I also not from the definition of continuous qualifying period under Annex 1 of Appendix EU that the period, in any event, can only be broken by a single period of absence of more than six months, which the Appellant has not broken here in returning to Greece to obtain his passport, which I am told was for a period of only two weeks, which, as the judge found, did not break his "continuous residence".

17. Therefore, and in any event, I find that the judge has considered the question of whether the Appellant fulfilled a qualifying continuous period of residence from the point of the Appellant's entry on 14th December 2020 onwards and the judge was so satisfied, having considered the documentary evidence and heard the testimony of the Appellant which was open him to find.

18. Notwithstanding the remaining passing challenges to the judge's findings, these are mere disagreement with those findings and are an attempt to reargue the appeal, and I am not persuaded that they reveal that the judge made findings that were not open to him on the evidence before him, as I have already found in any case.

19. I therefore find that the decision of the First-tier Tribunal is free from material error of law and must stand.

20. The appeal is dismissed.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 June 2024