



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001436

First-tier Tribunal No: EU/53117/2023
LE/00693/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 29 August 2024**

Before

**UPPER TRIBUNAL JUDGE BRUCE
UPPER TRIBUNAL JUDGE LANDES**

Between

**ARTUR WOJCIECHOWSKI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Robinson (Counsel instructed by Goscimski & Associates, Solicitors)

For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 7 August 2024

DECISION AND REASONS

1. The appellant is a citizen of Poland. On 22 January 2023 he submitted an application to the respondent under the EU Settlement Scheme. The application was refused on 26 April 2023 on the basis that whilst there was evidence of the appellant having resided in the UK periodically between April 2018 and March 2019, there was no evidence more recent than March 2019 and so he had neither shown a continuous qualifying period of five years, nor that he had an unbroken period of residence before the specified date (2300 on 31 December 2020). The respondent noted that they had attempted to contact the appellant “numerous times” between 4 and 11 April 2023 to ask for further evidence of residence but what had been provided was not sufficient.
2. The appellant appealed. At the time he was acting in person. He asked for his appeal to be decided on the papers without a hearing. In his appeal reasons he

explained *"I am appealing the refusal because I have presented all the necessary documents to the Home Office confirming my stay in England for over five years. During this time I worked and lived in Great Britain. For a while I neglected to pay the tax because I had a difficult family situation with my ex-partner but since the beginning of the year I have been trying to rectify this arrears. I have confirmation from employers from that period that I was employed. I have confirmation of renting an apartment and bank statements that can confirm my permanent stay there..."*

3. The appeal was decided by Judge Anthony on the papers. In a decision promulgated on 16 February 2024 she dismissed the appeal. She found that there were large gaps in the evidence, the only bank statements were for 2017, and the failure to provide evidence without a good explanation invited an adverse inference [7]. Although there were letters from two companies the appellant had worked for as a subcontractor, the letters did not confirm that the appellant had worked continuously for those companies [8] and although he had retrospectively filed self-assessment tax returns it was unclear simply from the amount of tax owed and penalty whether the appellant had absences of six months or more outside the UK, and, in one year, whether the appellant had not been earning enough to pay tax or whether he had been living abroad [11] - [13]. She found that the onus was on the appellant to discharge the burden of proof and he had not done so.
4. In his letter of 26 February 2024, seeking permission to appeal Judge Anthony's decision the appellant (again acting in person) explained the difficulties he had with the delivery of documents. We quote a relevant extract *"I would like to appeal against the latest decision of the home office (sic). After reviewing the documentation, I noticed that all the documents I sent electronically last time had not been delivered.... Bank statements were sent to confirm my stay in the UK for the last 6 years. A telephone conversation with the Home Office (sic) shows that due to a technical error, not all documentation was probably provided.... As I noted in the previous points, the documentation was sent to you complete. It is not understandable what could have happened and not all of them were delivered to you..."*.
5. Upper Tribunal Judge O'Callaghan granted the appellant permission to appeal. He noted the appellant's assertion that he had not been aware that the documents he had sought to send to the First-Tier Tribunal were not received and that he believed that bank statements and other documentary evidence would establish his presence in this country for more than 5 years and that he was resident before 23:00 on 31 December 2020. He stated *"Observing that the applicant is a litigant-in-person, and that his residence in this country at the relevant time is a matter of fact to be established, I consider the appeal to be arguable. However, it is for the appellant to get his evidence in order before the error of law hearing held before the Upper Tribunal."*
6. We had before us in the composite bundle a witness statement from the appellant dated 9 July 2024 and a notice under rule 15 (2A) Tribunal Procedure (Upper Tribunal) Rules 2008, seeking both to adduce the witness statement as evidence and to adduce a large number of documents such as bank statements and tax returns as proof of the appellant's residence in the UK. We clarified with Mr Richardson that it was just the witness statement that he sought to adduce at the error of law stage. We decided to admit the witness statement at the error

of law stage as it set out the evidence for the appellant's contention that there had been procedural irregularities which resulted in unfairness to the appellant.

7. Having read the appellant's witness statement and skeleton argument, considered the material visible to us on myHMCTS under case reference EU/53117/2023, and having heard from Mr Richardson and Mr Terrell, we announced that we considered that there had been procedural irregularities (of which Judge Anthony was not aware) such that Judge Anthony's decision would be set aside for reasons we would give later in writing. The below are our reasons.

Reasons for finding an error of law

8. Having considered the evidence referred to above, the skeleton argument and submissions, we are satisfied that:
- (i) The appellant did not understand the distinction between the Home Office and the Tribunal;
 - (ii) The appellant was convinced that he had sent all the required documents to the Home Office/Tribunal. We observe that there is a case note on myHMCTS evidencing that the appellant with the help of a friend rang the tribunal on 19 February 2024, 3 days after promulgation of the decision, and explained that bank statements for 2017 to 2023 had been provided but the "HO" had not used all the evidence;
 - (iii) The only documents uploaded by the appellant to the Home Office before their decision was made were the ones exhibited in the respondent's bundle as Mr Terrell has explained to us. Accordingly there is no valid criticism of the respondent for not including relevant documents in their bundle;
 - (iv) Once the appeal had begun, the respondent was directed to upload their documents by 24 July 2023. We cannot see on our view of myHMCTS, but we accept from the skeleton argument that the appellant was told that he would be contacted when the respondent's documents were ready to view on the online service;
 - (v) The respondent did not comply by the July date and so on 15 September 2023 the Tribunal's legal officers moved the appeal on and told the appellant that he must, by 13 October 2023, explain why the decision to refuse his case was wrong.
 - (vi) In September 2023, after that direction, the appellant tried, but had difficulties uploading the documents he wished to rely on to myHMCTS. He explained at paragraph 6 of his witness statement that he was trying to upload evidence supporting his appeal to myHMCTS, but there were problems with some documents not being visible and some not uploading successfully, and he was advised that he should post his evidence to the tribunal, to a PO box address in Leicester (which he sets out). He explains that he did post that evidence and that included bank statements for the period 2016 - 2021 as well as other documents. We are satisfied that the appellant believed he had posted bank statements to the tribunal for that period;
 - (vii) In fact no bank statements were uploaded to myHMCTS;
 - (viii) Once the appellant's appeal reasons and documents had been submitted the appeal left the case building phase and entered the stage at which it was said "*the tribunal caseworker will review the case submitted by the appellant*" (taken from case history on myHMCTS);
 - (ix) The respondent uploaded their documents on 12 December 2023;

- (x) The appellant did not receive any communication alerting him to the contents of the respondent's bundle, asking him if he wanted to add to his case before it was decided on the papers, or communicating to him the contents of any review of his case by the tribunal caseworker/legal officer.
9. We consider that the appellant did his best to provide relevant documents including bank statements to the Tribunal. Through a combination of circumstances including difficulties with uploading documents, the appeal being moved on to the stage at which the appellant had to build his case before the respondent's bundle was served, and the appellant not receiving further relevant communications from the Tribunal after the respondent's bundle was served, the appellant did not appreciate that the Home Office and the Tribunal did not have bank statements covering a period of at least 5 years before the application, but only a solitary bank statement of March 2017 originally produced to the Home Office.
10. We find that this combination of circumstances which of course includes communication, or lack of communication from the Tribunal, and difficulties uploading documents to myHMCTS, together amounts to a procedural irregularity which has caused injustice to the appellant. Of course, neither the respondent, nor Judge Anthony, were aware of this combination of circumstances.
11. We are satisfied that the procedural irregularity means that the decision of the First-Tier Tribunal must be set aside.

Remaking the decision

12. After discussions with the representatives, Mr Terrell told us that he had looked at the full material now submitted and that he agreed that the bank statements showed that the appellant had been present in the UK for 5 years before the date of the application.
13. We agreed at the hearing that on remaking we would allow the appeal. We considered it was just, on remaking, to admit all the evidence adduced with the rule 15 (2A) notice. That evidence included bank statements for every month between June 2017 and January 2023 (the date of the application) showing some UK based transactions in each month, meaning that the appellant has been continuously resident in the UK during that period. Accordingly the appellant satisfies the requirements of Appendix EU - EU11 condition 3 (b), namely that he is a relevant EEA citizen who has completed a continuous qualifying period of five years in that category and since then no supervening event has occurred. He therefore meets the eligibility requirements for indefinite leave to remain.

Notice of Decision

The decision of the First-Tier Tribunal of 16 February 2024 is set aside. On remaking, we allow the appeal.

A-R Landes

Judge of the Upper Tribunal

Appeal Number: UI-2024-001436

Immigration and Asylum Chamber

13 August 2024