



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-002297
(EA/14887/2021)

THE IMMIGRATION ACTS

**Heard at: Bradford
On: 17th October 2022**

**Decision & Reasons Promulgated
On: 25th November 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

**Besim Vejzi
(no order for anonymity)**

Respondent

**For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Ms Chaudhry, Counsel instructed by Graceland
Solicitors**

DECISION AND REASONS

1. The Respondent is a national of Albania. On the 10th March 2022 the First-tier Tribunal (Judge Ali) allowed his appeal under the Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020. The Secretary of State now has permission to appeal against that decision.

Background and Matters in Issue

2. On the 19th April 2021 the Respondent made an application for pre-settled status under the European Union Settlement Scheme. He supplied a marriage certificate showing that on the 12th April 2021 he had married a Ms Catalina Mihaela Radu, a Romanian national. Further evidence was supplied demonstrating that she was living in the UK and exercising treaty rights here.
3. On the 14th July 2021 the application was refused. The Secretary of State took no issue with the claims of marriage, Ms Radu's nationality or the assertion that she was exercising treaty rights in the United Kingdom. The application was refused on the grounds that the marriage had taken place after the specified date of the 31st December 2020. The Respondent had not been Ms Radu's family member before that date, and in the absence of evidence to show that he had been a durable partner prior to that point, the application fell to be refused.
4. Judge Ali took a different view, explained in his written decision of the 10th March 2022 as follows:

21. Looking at the evidence before me it is clear that the Appellant and his wife got married on the 12th April 2021 and there is a marriage certificate at page 16 of RB. This fact is also not disputed by the Respondent. While the Respondent's position is that the marriage took place after the specified date of 11pm on the 31st December 2020 and therefore the application does not succeed, the situation is not as simple as that.

22. This is because there is a caveat which is that the Respondent extended the deadline to make any relevant applications under the EUSS settlement scheme to the 30th June 2021 and I need to consider the evidence that is before me at the date of the appeal hearing. The Respondent's position was that given she did not accept that the Appellant and his wife were married then they needed to show that they were in a durable relationship and the Respondent asserts that they had not done so.

23. In light of the marriage certificate that is before me the Appellant is I find a direct family member as defined under Regulation 7 of the 2016 EEA Regulations. Given that the marriage was before the 30th June 2021 (the cut-off point) and the fact that the Appellant is a direct family member then the provisions of Regulation 7 of the 2016 EEA Regulations still apply during the grace period. Therefore, I find that in light of this the issue of 'durable relationship' ceases to become an issue of dispute. I find that the Appellant and his wife were officially married within the relevant time period (Grace Period) and thus I find that the Appellant is the direct family member of a relevant EEA National. I therefore find that the appeal succeeds on that basis.

24. As a result of the above I find that in respect of this appeal the Appellant meets the requirements for a Family Permit under Appendix EU (Family Permit) to the Immigration Rules.

5. In this onward appeal the Secretary of State contends that the decision of Judge Ali is flawed for a material misdirection in law. It is submitted that the Tribunal has misunderstood the effect of what he refers to as the 'grace period'. This term derives from the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('the Grace Period Regs). The grounds contend as follows:

The Appellant cannot benefit from the Grace period regulations which provides that certain provisions of the EEA Regulations 2016 will continue to apply to a 'relevant person' during the grace period between the 31/12/20 and the end of 30th June 2021.

The Appellant's application was after the deadline of the 31/12/20 and, on the facts alleged, he cannot come within the definition of a 'relevant person' as per part 3 of the Grace Period Regulations.

He has never had [leave to enter or remain or] any right to reside under the EEA Regulations at any time. Therefore he has no right to rely on any part of the EEA Regulations 2016 as preserved by the Grace Period Regulations or otherwise..."

6. The grounds then set out Regulation 3(6) of the Grace Period Regs. I consider the effect of that provision below.

Discussion and Findings

7. The question raised by the grounds is whether the Respondent was a 'relevant person'. It is uncontroversial that if he is, the Secretary of State's appeal would fall to be dismissed, because in those circumstances Reg 3 (2) of the Grace Period Regs would apply. He would benefit from the grace period, and First-tier Tribunal Judge Ali's reasoning would be correct.

8. Regulation 3(6) provides (insofar as here relevant):

Grace period

3.—(1) This regulation has effect if the EEA Regulations 2016 are revoked on IP completion day (with or without savings).

(2) The provisions of the EEA Regulations 2016 specified in regulations 5 to 10 continue to have effect (despite the revocation of those Regulations) with the modifications specified in those regulations in relation to a relevant person during the grace period.

(3) The provisions specified in regulation 11 apply in relation to a relevant person during the grace period as if any reference to the EEA Regulations 2016 or any provision of those Regulations are to the Regulations or provision of the Regulations as continued in effect and modified by regulations 5 to 10.

(4) The enactments specified in regulation 12 apply in relation to a relevant person during the grace period with the modifications specified in that regulation.

(5) For the purposes of this regulation—

(a) the grace period is the period beginning immediately after IP completion day and ending with the application deadline;

(b) a person is to be treated as residing in the United Kingdom at any time which would be taken into account for the purposes of calculating periods when the person was continuously resident for the purposes of the EEA Regulations 2016 (see regulation 3);

(c) a person who does not have the right to reside in the United Kingdom permanently is to be treated as having such a right if the person had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15) and who, immediately before IP completion day, has been absent from the United Kingdom for a continuous period of 5 years or less (disregarding any period of absence before the person acquired the right of permanent residence).

(6) In this regulation—

...

“relevant person” means a person who does not have (and who has not, during the grace period, had) leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules and who—

(a) immediately before IP completion day—

(i) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(ii) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15), **or**

(b) is not a person who falls within sub-paragraph (a) but is a relevant family member of a person who immediately before IP completion day—

(i) did not have leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules, and

(ii) either—

(aa) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(bb) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15).

9. Breaking down the definition at Reg 3(6) I find as follows. The bold text here is direct citation of the provision.

10. By regulation 3(6) a **“relevant person” means a person who does not have (and who has not, during the grace period, had) leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules.** That, it is agreed, is true of the Respondent.

11. That person must also demonstrate that **immediately before IP completion day he was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or that he had a right of permanent residence in the United Kingdom under those Regulations.** None of that applies to the Respondent.

12. The Regulation then makes alternative provision. Sub-clause (b) provides that if the individual:

is not a person who falls within sub-paragraph (a)

(we see above that this is the case here)

but is a relevant family member of a person

(this is not in dispute - he *is* a relevant family member of Ms Radu)

who immediately before IP completion day—

(i) did not have leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules,

(Ms Radu had no such leave)

and

(ii) either—

(aa) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or

(It is the uncontested position that she was in the UK exercising treaty rights prior to IP completion day)

(bb) had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15).

(this does not apply).

13. It seems to me that on that definition the Respondent is, as Judge Ali accepted, a relevant person. The definition at Reg 3(6)(b) does not require him to have been lawfully resident, or to have had a residence card confirming the same. It requires only that one of those is true of his EEA family member, here his wife Ms Radu. It follows that he did enjoy the benefit of the grace period, and there was no error in the First-tier Tribunal allowing his appeal on that basis.

Decisions

14. The decision of the First-tier Tribunal is upheld. The Secretary of State's appeal is dismissed.
15. There is no order for anonymity.

Upper Tribunal Judge Bruce
18th October 2022