



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

Case No: UI-2022-005723

First-tier Tribunal No: EA/01520/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 6 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**  
**DEPUTY UPPER TRIBUNAL JUDGE WILDING**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**TOMASZ ARKADIUSZ MIKULSKI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer  
For the Respondent: No appearance

**Heard at Field House on 20 July 2023**

**DECISION AND REASONS**  
**(extempore)**

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State refusing him permanent residence under the EU Settlement Scheme. The case was decided on the papers and the First-tier Tribunal Judge decided in the claimant's favour.
2. The claimant had been told about today's hearing; we have the notice of hearing in our papers and it shows when it was sent to both the claimant and the Secretary of State. The Secretary of State is here so we can be confident that the notice was sent. There has been no response from the claimant. My clerks checked the office and reported that no message had been received at 14.07. The hearing was by video link and the parties were told to be ready to start at 2 o'clock so the claimant should have been contacting the Tribunal well before 2 o'clock but there has been no contact. We are satisfied on the evidence that the claimant knows about the hearing and has chosen not to take part.

3. Ms Everett relies on the Secretary of State's grounds and the point is extremely simple. The judge misdirected herself by not establishing first if the claimant was in fact a resident in the United Kingdom by the "cut-off date" which is 31 December 2020. In order to come within the scope of the Rules the claimant had to be resident at that date. We have to say that it looks from the papers as though he was *not* resident at that date because he talks about establishing himself in the United Kingdom in April 2021 which is inconsistent with the necessary requirement.
4. In fairness to the judge, although the need to be resident by 31 December 2020 is acknowledged in the papers it was not the main points taken in the refusal letter and although we find that the judge erred we have more than a little sympathy; but she was wrong and in the absence of any contrary argument we are quite satisfied that the decision has to be set aside for error of law and we re-make the decision and dismiss the appeal.
5. We did reflect before doing this because we do realise that it is unattractive for a person who thinks that he has "won" to find that he has lost but the law is, on this point at least, clear. He had to show residence at the required date as indicated. Not only did he fail to do that but his documents rather suggested that his residence started after the required date. In the circumstances there is only one proper outcome and that is to dismiss the appeal.
6. In case there is any doubt we find the First-tier Tribunal Judge erred in law, we set aside the decision, we re-make the decision and we dismiss the appeal against the Secretary of State's refusal.

**Notice of Decision**

7. The First-tier Tribunal erred in law. We set aside its decision and substitute a decision dismissing the claimant's appeal against the Secretary of State's decision to refuse him permanent residence.

**Jonathan Perkins**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 July 2023**