



THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 14th of November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

**SOOSAINATHAR NIXON
THATSHAINIE NIXON
JOHN NIXON
(NO ANONYMITY ORDER MADE)**

Appellants

and

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

Respondent

Representation:

For the Appellants: Mr S Karim, Counsel instructed by MTC Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 6 October 2023

DECISION AND REASONS

1. This appeal is against the decision of First-tier Tribunal (FtT) Judge Iqbal (the Judge) promulgated on 19 April 2023. In the FtT the appellants challenged the decisions of the respondent refusing applications under the EU Settlement Scheme (EUSS). The Judge dismissed their appeal.
2. The first appellant is an Italian national who claimed that he was entitled to remain in the UK as he had arrived in the UK in December 2020. The second appellant is the wife of the first appellant and is a Sri Lankan national, and the third appellant is the child of the first two appellants (born 29 November 2019) and is an Italian national. The second and third appellants sought to join the first appellant as family members. The respondent had refused the applications of the second and third appellants on the basis that their sponsor (the first appellant)

had not been granted status under the EUSS. The respondent refused the first appellant's application on the basis that he had not proved 5 years continuous residence in the UK and so did not satisfy the definition of a 'relevant EEA citizen'.

In the First-tier Tribunal

3. The Judge joined the cases of all three appellants together and heard evidence from the second appellant through an interpreter in addition to considering written evidence. In the FtT determination the Judge also outlines the witness statement evidence of the first appellant and of a witness who gave evidence that he had been the first appellant's landlord when he arrived in the UK.
4. The Judge details that the parties had agreed the issues as being:
 - a. Whether the first appellant was a 'relevant EEA citizen' for the purposes of EU14 of the Immigration Rules (the FtT judgment includes the definition of a relevant EEA citizen); and
 - b. Whether there were reasonable grounds for the first appellant's application to the respondent being late.
5. The Judge proceeded on the basis that, if the first appellant was successful in his appeal, the second and third appellants would have their appeals allowed on the basis that they would satisfy the definition of joining family members.
6. Over six paragraphs [20-25] the Judge considers evidence relating to the first appellant's arrival and subsequent time in the UK. The judge concludes that "when I consider the totality of the evidence submitted on balance I am not satisfied that the Appellant arrived in December 2020". The Judge consequently determined that the first appellant did not satisfy the definition of a 'relevant EEA citizen' which includes a requirement to have been resident in the UK for a qualifying period starting before the specified date (2300 GMT on 31 December 2020). The Judge dismissed the appeal.

In the Upper Tribunal

7. The appellants appealed, and were granted permission, on grounds that:
 - a. The Judge failed to make any findings on one of the agreed issues in the case;
 - b. The Judge imposed a requirement for the first appellant to produce documentary evidence to prove residence in the UK despite that not being a requirement in the immigration rules;
 - c. The Judge failed to give adequate reasons for rejecting the evidence of the appellant's witness (his landlord).
8. I had the benefit of written grounds of appeal for the appellants, a rule 24 response from the respondent, and oral submissions from both parties.

9. The appellant addressed the second ground first, pointing to [21] of the FtT decision which notes the lack of documentary evidence supporting the first appellant's claim to have arrive in the UK on 21 December 2020 and to [23] where the Judge states that:

"I do not find it credible that having arrived in the UK in December 2020 that he is unable to produce a single piece of documentary evidence to support his residence in the United Kingdom between December 2020 – May 2022, a period of over seventeen months."

10. The appellants submit that the Judge accepted that if the first appellant arrived in the UK by coach, he would not have a passport stamp. Because the Immigration rules do not require documentary corroboration, the Judge has erred (say the appellants) by requiring such evidence on appeal. They submit that, despite there being evidence from other sources, the Judge has focussed on requiring corroboration.
11. With regards to the third ground, the appellants assert that the Judge gives no more than a bare assertion that the evidence of the witness is not accepted. They say that this takes on a higher level of importance because the first appellant had been prevented from giving evidence himself as a result of the UK Border Authorities not allowing him back into the UK in time to give evidence at the hearing. There is no assertion that this was done maliciously, only that he was entitled to be allowed back into the country and had not been (an assertion the Judge agreed with).
12. On the first ground, the appellants submit that the failure to address the agreed issues in the case is illustrative of the lack of scrutiny that is given to the case.
13. The respondent submitted that the Judge was not introducing a requirement for corroboration, but was drawing a proper inference from the absence of supporting evidence in line with TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40 at [21]:

'[W]here a Judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be supporting evidence and there is no credible account for its absence commits no error of law when he relies on that fact for rejecting the account of an appellant.'

14. On the third grounds, the respondent submits, the Judge was entitled to place limited weight on the evidence of a witness who was not present to be cross examined. The judge was entitled to consider this aspect as part of the evidence in the round. The respondent says that he first ground is not made out because the requirement to assess the issues in the case were dependent on the presence of the first appellant in the UK on the relevant date.
15. In considering the second ground of appeal, I see that that the Judge at [21] notes the documentary evidence that has been provided the FtT. At [22] the Judge takes into consideration the difficulties posed by the lockdowns around the time the first appellant says he arrived in the UK. The Judge considered that, if the evidence that the landlord had accommodated the first appellant on arrival in the UK were true, the landlord could have provided him with proof of address

which would have enabled him to register with a GP on (or soon after) arrival, rather than in May 2022.

16. The Judge then, at [23], comes to the conclusion that it lacks credibility for the first appellant to claim he had been in the UK since December 2020 whilst simultaneously being unable to produce supporting documentary evidence of this. In my assessment the Judge looks across the evidence available to the FtT, including the first appellant's account as to why he did not apply for a National Insurance Number online (he was not familiar with the website).
17. I do not accept the appellants' submission that the Judge has imposed a requirement for corroborative written evidence. It is clear on the face of the FtT decision that the Judge is looking at the evidence together, noting that there is no supporting evidence for the disputed time period, and that the Judge - as a specialist Tribunal experienced in fact finding in cases of this nature - would normally expect there to be some supporting documentary evidence relating to that period. I do not find that the Judge imposed a requirement of corroborative evidence. I find that the Judge was entitled to take into consideration the lack of supporting evidence in the way that has been done as part of assessing the case in the round.
18. With regards to the first ground, I find that the Judge did not address the full issues that had been pleaded in the FtT. However, once the Judge assessed that the appellant was not in the country on the specified date, the first appellant could not have satisfied the definition of a relevant EEA citizen. Far from improperly failing to address the issues, the Judge has properly identified an aspect of that definition that was not satisfied by the evidence and the Judge has chosen not to perform unnecessary further which, even if decided in the first appellant's favour, would still result in the same outcome.
19. In analysing the statement of the first appellant's landlord, the Judge assesses the credibility of this in the only way realistically available to the Tribunal where the witness has not given live evidence. That is to say, the Judge analyses the written evidence of the landlord against other evidence in the case. At [24] the Judge takes into consideration the possibility of the landlord offering advice on how to get a NI number or register with a GP if the first appellant had been living under his roof. The Judge takes the minimal evidence available to the FtT and considers pieces of evidence against each other. The Judge has not given a 'bare assertion' that the witness's evidence is not accepted. I conclude that the Judge's approach to the evidence of the landlord is appropriate.
20. I find that the Judge approached the question of corroborative evidence correctly and did not err in law on the second ground. Rather, the Judge has considered the evidence in the round and properly looked at the case as a whole. I find that the reasons the Judge did not accept the landlord's evidence are sufficiently clear. I find that the Judge has not erred in law on the first ground because the Judge gave the issues as much consideration as they merited in order to achieve fairness before coming to a conclusion on them. There is no error of law in the decision of the FtT and I uphold the decision.

Notice of Decision

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I do not set aside the decision.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 November 2023