



**Upper Tribunal
(Immigration and Asylum Chamber)**
EA/15664/2021

Appeal Number: UI-2022-003577;

UI-2022-003578; EA/02713/2022
UI-2022-003579; EA/02994/2022
UI-2022-003580; EA/03583/2022
UI-2022-003581; EA/03997/2022

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2022**

**Decision & Reasons Promulgated
On 15 February 2023**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE B KEITH**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SHAH ALAM KHAN
FATEMA ALAM
ZAARID KHAN
NAJINA ALAM
PARSA ALAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Chowdhury, Partner, Kingdom Solicitors

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed, against the decision of First-tier Tribunal Monson dated 22 July 2022 who dismissed the appellant's appeal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020.

2. The relevant background is set out by the First Tier Tribunal:

"3. The first and second appellants are related to each other as husband and wife, and the third to fifth appellants are their children. Shortly before 1 July 2021, the appellants entered the United Kingdom on Italian passports, and applied for pre-settled status under the EU Settlement Scheme.

4. The application of the first appellant was supported by an Italian passport that had been issued to him on 12 March 2021. Also, he produced a copy of his Italian identity card that had been issued to him on 24 June 2019. In that identity card, his place of birth was given as Chandpur in Bangladesh on 10 June 1972, and he was said to be a national of Bangladesh."

3. The FTT went on to summarise the central issue in the case:

"10. On 5 November 2021 the respondent gave her reasons for refusing the application made by the first appellant. As evidence that he was an Italian national, he had provided an Italian passport issued in March 2021. He had stated in his Questionnaire that he had acquired this passport in 2021. He therefore did not meet the eligibility requirements under the EU Settlement Scheme. It was a requirement that he should have qualified as an EU citizen on or prior to 31 December 2020."

4. The Appellant grounds run to 13 paragraphs. In terms of grounds, in oral submissions it was clarified that there was essentially one ground of appeal: that the SSHD accepted at the First Tier Tribunal that the Italian Passport of the first appellant was a valid one and as a result settled status should be granted. It was also argued that the first appellant was resident in the UK for two weeks from 15 November 2021.

The Hearing

5. At the hearing before us Mr Chowdhury submitted firstly, that the Respondent had accepted the Italian passport as evidence of nationality at the FTT hearing. In oral submissions he conceded that the passport was not issued until March 2021. However, he then argued that in fact the date of nationality should be taken as an earlier date as during the application - this is the same argument as was before the FTT and dismissed.

Analysis

- 6.** The First Appellant concedes that his passport was issued on 12 March 2021 after the 31 December 2020 cut-off date for residence in the UK. The FTT dealt with this argument as follows:

26. In view of the fact that Mr Khan adduced as evidence of his EEA citizenship status an Italian passport that had been issued to him in March 2021, the respondent has reasonably taken the position that Mr Khan was not an Italian national prior to that date. This appears to have been conceded in the grounds of appeal that were settled on his behalf. At that juncture, it was stated that when Mr Khan checked the progress of the family's Italian citizenship applications in June 2020, he was not able to establish that they had been granted Italian citizenship.

27. However, the same documentary evidence is now relied on as showing that Mr Khan and the rest of the family had all been granted Italian citizenship as of that date. Although Ms Gondal did not challenge Mr Khan's interpretation of the documentation contained in the supplementary bundle, I do not consider that it is satisfactorily established that Mr Khan's new interpretation of this documentation is correct. The English translation of the information about the status of the citizenship application made on 19 July 2016 is as follows: "Application is definitive. You will receive a notice from the prefecture/consulate. You can also see the section communications for further information."

- 7.** At [4] of the determination, it is also recorded that the main appellant 'produced a copy of his Italian identity card that had been issued to him on 24 June 2019. In that identity card, his place of birth was given as Chandpur in Bangladesh on 10 June 1972, and he was said to be a national of Bangladesh'. That identity card does not demonstrate that the appellant was an Italian citizen and thus be acceptable as evidence for admission to the UK under the Immigration (European Economic Area) Regulations 2016 prior to their revocation at the specified date.
- 8.** The FTT judge rightly rejected that submission. There was no evidence before the FTT or before us to show that any of the appellants was a relevant EEA Citizen prior to 31 December 2020. Therefore, none of the appellants qualify under Appendix EU for pre-settled status.
- 9.** The submission that the SSHD conceded that the Italian Passport was evidence of Italian Nationality at the First Tier Tribunal and that therefore meant the appeal should be allowed is unarguable. The evidence is that the passport is genuine but the issue is that it only proves Italian nationality from 12 March 2021 not prior to the deadline. It is therefore impossible for the SSHD to have conceded such a fact, in any event on the evidence the judge was correct to find that there was no evidence of nationality prior to the cut-off date.

10. It was also argued briefly in the alternative that the COVID-19 Pandemic meant that the first appellant and family were unable to return to the UK until after the cut-off date and as a result the SSHD should have exercised a discretion to assist them. There is no law cited for the existence of a discretion nor does it seem that it would assist the Appellants. We find there is not such discretion. The issue is that there remains no evidence that the first Appellant was an Italian national at any point prior to March 2021. That fact is irrefutable and fatal to the arguments in this case.

11. In relation to the additional submissions on continuous qualifying period the Respondent has helpfully summarised the position. The submission pointed out the issue with nationality already dealt with. In relation to the continuous qualifying period the Respondent submitted that the Appellants did not qualify under any criteria in particular because even if the First Appellant was resident for two weeks from 15 November 2020 he returned to the UK on 13 June 2021 and did not apply under Appendix EU until 30 June 2021. Paragraph (b)(i) of the definition of ‘continuous qualifying period’ requires that the Appellant is not absent for a period of more than 6 months and states (in relation to circumstance relevant to this case):

(i) absence(s) from the UK and Islands which exceeded a total of six months in any 12-month period, except for:

(aa) a single period of absence which did not exceed 12 months and was for an important reason (such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting, or because of COVID-19); or

(bb) a single period of absence which did not exceed 12 months and which, although the absence was not originally for an important reason, is to be treated as being for an important reason as it exceeded six months because of COVID-19; or [...]

12. Therefore, the Appellants would only fulfil the continuous qualifying period if they can meet sub paragraphs (aa) or (bb) above. The FTT dealt with the reasons for the delay at paragraph 15:

‘15 The main reason for his late entrance to the UK was that daughter’s final exams. His daughter’s school summer holidays started on 10 June 2021, and he came to the UK shortly thereafter. It was always his intention to come and settle in the UK along with his wife and children. It was not his fault that he came after 31 December 2020’

13. In our judgement there is no evidence to show that the First Appellant fulfils any of the criteria within sub paragraphs (aa) or (bb). His absence of over 6 months is therefore fatal to any submission that he came within the continuous qualifying period.

14. For the reasons given above the appeal is dismissed.

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Notice of decision

The decision of the First-tier Tribunal will stand and the appeal remains dismissed.

No anonymity direction is made.

Signed B Keith

Date

Deputy Upper Tribunal Judge Ben Keith

16 January 2023