IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004364

First-tier Tribunal No: EU/54423/2023
LE/00442/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th December 2024

Before

UPPER TRIBUNAL JUDGE BULPITT
AND
DEPUTY UPPER TRIBUNAL JUDGE LAY

Between

Sanjeeb Gautam
(NO ANONYMITY DIRECTION MADE)

Applicant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J Gazzain, Counsel instructed by Bond Adams Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

Heard at Field House on 22 November 2024

DECISION AND REASONS

1. The appellant is a 35-year old citizen of Nepal. On 17 April 2021, whilst resident in the United Kingdom, he made an application to the respondent for indefinite leave to remain in the United Kingdom under the European Union Settlement Scheme (EUSS). The respondent refused that application on 21 September 2021. The appellant sought an administrative review of that decision and eventually, on 12 July 2023, following such a review the respondent maintained the decision to refuse his application.

2. The appellant appealed against the respondent's decision to the First-tier Tribunal requesting that his appeal be resolved without a hearing. The respondent also consented to the appeal being resolved without a hearing. Therefore on 26 June 2024, First-tier Tribunal Judge Rae-Reeves (the Judge)

considered the appellant's appeal on the papers. Having done so, the Judge issued a decision dismissing the appeal. Not satisfied with that outcome, the appellant sought permission to appeal against the Judge's decision to the Upper Tribunal. Permission was granted by a First-tier Tribunal Judge and thus the matter came before us.

3. An anonymity order was made by an Upper Tribunal Judge when this matter was listed on a precautionary interim basis. Mr Gazzain did not seek to maintain that order and having reviewed the evidence we do not consider there to be any good reason to interfere with the important principle of open justice by maintaining the order. Accordingly, we discharge the anonymity order that was made on 14 October 2024.

The application under the EUSS

4. At the time he made his application to the respondent the appellant was represented by Connaught Solicitors. The application was made on the basis that the appellant had been continuously resident in the United Kingdom for more than five years and that he was the spouse of a relevant EEA citizen, Denise Aranyos, who he had married on 29 November 2014. The application acknowledged that Ms Aranyos was no longer living in the Unted Kingdom and had not made an application under the EUSS. In her refusal dated 21 September 2021, the respondent stated she was not satisfied that the appellant had been continuously resident in the United Kingdom for five years after marrying Ms Aranyos. The respondent also stated she was not satisfied that after the marriage Ms Aranyos had been resident in the United Kingdom with the appellant for a continuous qualifying period.

5. When he asked for an Administrative Review of the respondent's decision the appellant said that he realised he may have made some errors and did not send enough evidence. He then submitted some letters he said were from employers to show the time that he and Ms Aranyos had been resident in the United Kingdom. In her letter dated 12 July 2023 maintaining the refusal of the appellant's application, the respondent stated that the letters which were said to be from the employers were not an acceptable form of evidence and that requests for further information had gone unanswered. The respondent remained of the view that the appellant had failed to establish that he had been continuously resident in the United Kingdom and failed to establish that Ms Aranyos had either been granted EUSS status or was entitled to be granted EUSS status because of her continuous residence. The respondent was accordingly not satisfied that Ms Aranyos met the definition of relevant EEA citizen and was not satisfied that the appellant met the requirements for being granted leave to remain under the EUSS.

The appeal to the First-tier Tribunal

6. At the time he appealed to the First-tier Tribunal the appellant was no longer represented by solicitors. He did not provide any grounds of appeal so was asked to provide the reasons for his appeal. In response the appellant raised for the first time an assertion that he was the victim of domestic violence and that made it difficult to get the evidence the respondent wanted. He submitted a psychiatric report prepared by Dr Kashmiri dated 18 November 2019 and he maintained that he had been continuously resident in the United Kingdom, saying that the Home

Office could obtain evidence of his residence and that he should have received more help as a vulnerable applicant. Later the appellant additionally submitted a witness statement in which he repeated that his marriage broke down after he had suffered domestic violence.

7. The respondent served a bundle of evidence which included the appellant's EUSS application and the documents that the appellant had submitted with the application and in response to requests for further information. The respondent provided a "respondent's review" addressing the issues raised by the appellant in his reasons for appeal answers. In the review the respondent said there was still not sufficient evidence of the appellant's continuous residence in the United Kingdom or of Ms Aranyos's residence in the United Kingdom after March 2015. The respondent noted that the appellant had raised being a victim of domestic violence but said that no evidence had been provided to corroborate this.

The Judge's decision

8. The Judge summarises the evidence at [7] – [15] of his decision and sets the legal framework at [16] – [19] before turning to his findings. At [21] the Judge found that Ms Aranyos is not a relevant EEA citizen, noting at [22] that the evidence at its highest was that Ms Aranyos was living and working in the United Kingdom in 2014 and 2015 but that there was no further evidence of her status in the United Kingdom. The Judge concluded that this finding was fatal to the appellant's application as the appellant was unable to prove he was *the family member of a relevant EEA citizen.* The Judge accordingly dismissed the appeal though he did conclude at [23] that despite the sparse evidence it was likely the appellant has been in the United Kingdom since 2014, though he did not have enough evidence to make a finding about whether the appellant has ever left the United Kingdom.

The appeal to the Upper Tribunal

9. The appellant drafted the application for permission to appeal himself, but by the time of the hearing before us was represented by Bond Adams Solicitors. The grounds are generalised but include that the appellant had explained why he could not provide evidence of Ms Aranyos's residence in the United Kingdom but this was overlooked. They also state: "I should have applied as former family member whose relationship has broken down."

10. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Chowdhury. At [3] of her decision Judge Chowdhury says that it is unclear if the Judge considered whether the appellant had gained permanent residence in the United Kingdom by 2019, and whether the appellant had provided evidence corroborating the couple's exercise of treaty rights during the period 2014 - 2019. Mr Gazzain wisely did not pursue this argument in the hearing before us, recognising that the Judge had in fact considered whether there was evidence of the couple exercising treaty rights between 2014-2019 but that the Judge recorded that the evidence at its height was that Ms Aranyos was exercising treaty rights between 2014-2015 only, so on the facts found by the Judge the appellant could not have gained permanent residence in the United Kingdom by 2019.

11. At [4] of her decision Judge Chowdhury also granted permission to appeal on the ground that it was arguable that the Judge ought to have issued an "Amos

direction" to ascertain whether the appellant had a retained right of residence because Ms Aranyos was exercising treaty rights at the time of the couple's separation. This was the basis on which the appeal was pursued by Mr Gazzain in the hearing before us.

12. Mr Gazzain submitted that the Judge should have considered whether the appellant was entitled to a grant of pre-settled status under the EUSS as *a family member who has retained a right of residence.* Mr Gazzain acknowledged that consideration of this issue would still include the Judge determining whether Ms Aranyos is, or was at the time of the breakdown of the relationship, a *relevant EEA citizen* but Mr Gazzain submitted that to fairly determine that question the Judge should have directed the respondent to make enquiries with relevant government departments (an "Amos direction") to establish Ms Aranyos' status in the United Kingdom at the time the relationship between her and the appellant broke down, which he submitted was in 2016. The failure of the Judge to make this direction was, Mr Gazzain argued, contrary to the interests of justice and amounted to an error of law.

13. Mr Deller argued that the assertion that the appellant was a *family member who has a retained right of residence* was never made either to the respondent or the Tribunal. Instead the appellant's case was left "floating" and it was not reasonable to expect the Judge to put the pieces together to construct the appellant's case for him. Mr Deller argued that there was no requirement for the Judge to make an Amos Direction and that the Judge did not make an error when he did not issue such a direction.

14. At the conclusion of the hearing we indicated our conclusion that the Judge had not made an error of law and that his decision would stand. We explain that conclusion in the following paragraphs.

Analysis

15. Despite the complexity of the terms of the EUSS and the legal framework which surrounded this appeal, the issues which we needed to resolve were straightforward. The core of the appellant's appeal is the suggestion that the Judge *should have* considered an issue that had not been positively advanced (whether the appellant was a family member who has retained a right of residence) and *should have* made an Amos direction that was never directly requested. We cannot accept the proposition that by failing to do either of these things the Judge made an error of law.

16. As a Presidential panel of the Upper Tribunal made clear in Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC), parties in an appeal to the First-tier Tribunal are under a duty to provide the Tribunal with relevant information as to the circumstances of the case and to engage in the process of defining the issues in dispute. The judge in such an appeal can properly expect clarity as to the remaining issues by the date of the substantive hearing. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl through the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified. This applies equally whether the appellant is represented or not, with the process for an unrepresented appellant requiring such an appellant to provide the reasons for appeal and the respondent to engage with those reasons in a meaningful review (see [21] of Lata).

17. Here, although the appellant has mentioned in his reasons for appeal the breakdown of his relationship with Ms Aranyos and made an assertion that he was the victim of domestic violence, at no time prior to the Judge's consideration of the appeal on the papers was it suggested that the appellant met the definition in the EUSS of a *family member who has a retained right of residence.* Significantly, this was not the basis of the appellant's application to the respondent even though the appellant was at that time represented by solicitors and even though on the appellant's case the domestic violence had occurred and the relationship had broken down some years before the application was made. Instead, the suggestion that the appellant met this definition was made for the first time indirectly in the application for permission to appeal against the Judge's decision when the appellant said "I should have applied as a former family member whose relationship has been broke down [sic)]".

18. The submission that the Judge erred in law by failing to consider whether the appellant was a family member who has a retained right of residence, even though no such assertion had been made, is contrary to the process described in Lata and the process anticipated by the First-tier Tribunal's Procedure Rules and Practice Directions. The appellant's case is predicated on there being an obligation on the Judge to take the information that was haphazardly provided by the appellant in various documents and responses and to construct from that information the appellant's case for him, when no such obligation exists. Instead, the Judge was required to consider the case that was advanced before him which was that the appellant was a family member of a relevant EEA citizen.

19. It is in this context that the appellant's submission that the Judge should have made an Amos Direction in order to fairly determine whether Ms Aranyos was a relevant EEA citizen falls to be considered.

20. The power for a Judge to make an Amos Direction arises from the general case management powers identified in rule 4 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 which includes at r4(3)(d) the power to require a party or another person to provide documents, information, evidence or submissions to the Tribunal. Neither party identified, and we are not aware of, any Practice Direction or Practice Statement that relates to the exercise of this power to make an Amos Direction. Mr Gazzain accepted that the power to make such a direction must be a matter of judicial discretion and that as such there was no obligation on the Tribunal to make an Amos direction. Mr Gazzain argued however that in the circumstances it should have been "obvious" to the Judge that a direction should be made and that the interests of justice required the making of a direction.

21. We remind ourselves that the question we must determine is whether the Judge's failure to make an Amos Direction amounts to an error of law and that the threshold for the judicial exercise of discretion to amount to an error of law is a high one. It is not a question of whether looking at the situation now we think an Amos Direction should be made, instead the question is whether a reasonable judge properly directing himself could have resolved the appeal without making an Amos Direction. For a number of reasons we are not satisfied that the high threshold for establishing an error of law has been reached.

22. First, although the appellant did raise his difficulty getting documentation about his wife, the Judge was never directly asked to make an Amos Direction and, when we asked him, Mr Gazzain stopped short of suggesting that the Judge's failure to issue an Amos Direction of his own motion was a "Robinson obvious" error. We agree with that concession, as the precise nature of the appellant's

case was far from obvious, indeed it has shifted entirely after the Judge made his decision. Second, there had been an explicit request by the appellant that the appeal be resolved on the papers that had been served. Third, these were adversarial proceedings with the expectation that the parties advance their case and where necessary make appropriate applications for directions and evidence. Had the Judge been undertaking an inquisitorial assessment of all the circumstances he might have considered not only an Amos Direction but also a wide range of directions seeking further information about the appellant's history, for example information about previous immigration applications and appeals which had not been provided but which may have been relevant. The fact that the Judge did not ask for any of this information is a reflection of the nature of the adversarial and not inquisitorial nature of the proceedings. Fourth, the evidence from the appellant about Ms Aranyos, the domestic violence and the breakdown of their relationship was extremely vague and unclear and in the light of such vague evidence it is hard to conceive of how an appropriate targeted Amos Direction could be drafted without the direction requiring the relevant body to undertake a disproportionate fishing exercise. Fifth, the limited evidence that was served by the appellant about the breakdown of the relationship included the suggestion at [6.3] of the psychiatric report that the appellant maintained contact with Ms Aranyos on WhatsApp and did not include a clear explanation of what (if any) steps had actually been taken to obtain information directly from Ms Aranyos. In other words, the evidence provided did not establish that a direction was necessary.

23. In summary, therefore, in all the circumstances we conclude that it was reasonable for the Judge to not exercise his discretion and make an Amos Direction of his own motion. We further find that there was no error of law in the Judge's assessment of the evidence and his conclusion that the appellant's application could not succeed because the evidence did not establish that Ms Aranyos was a relevant EEA citizen.

Notice of Decision

The appellant's appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands.

Luke Bulpitt

Upper Tribunal Judge Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 November 2024