



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

Case No: UI-2022-006022

First-tier Tribunal No: EA/03829/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 10 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**  
**DEPUTY UPPER TRIBUNAL JUDGE HARIA**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**Frank Amponsah Ofori**  
(no anonymity order made)

Respondent

**Representation:**

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr J Waithe, counsel instructed by Solomon Shepherd Solicitors

**Heard at Field House on 17 March 2023**

**DECISION AND REASONS**

(extempore)

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter the claimant, against the decision of the Secretary of State refusing him status as the husband of an EU national exercising treaty rights.
2. The appeal was determined on the papers and the First-tier Tribunal was satisfied that the appellant satisfied the requirements of the Rules. The particular point of contention identified by the Secretary of State was whether the appellant was resident in the United Kingdom prior to the cut off date of 31<sup>st</sup> December 2020. The judge decided that he was but decided that entirely on documents that postdated that cut off date and did not of themselves show or even indicate residence before that date. I bear in mind that this was a papers hearing; there was no question of any gaps in the evidence being filled by oral evidence.
3. When the matter came before us Mr Waithe, for the claimant, recognised the

strength of the Secretary of State's position and conceded that the judge's conclusion was not sustainable because it was not just explained adequately in the light of the evidence before the judge.

4. However, Mr Waithe drew attention to an application by solicitors to adduce further evidence and asked us to determine the appeal today. The further evidence is evidence of a kind that could have been available to the First-tier Tribunal and indeed should have been but, in deciding whether to admit that evidence, we do bear in mind that the claimant was not represented before the First-tier Tribunal. He was acting for himself and probably had no appreciation of what was required. In the interests of justice we permit the additional evidence to be adduced. Mr Walker did not object.
5. We then moved on to redetermine the appeal. As we have indicated, the point of contention was residence before the 30 December 2020. The evidence took a rather curious turn because the additional documents showed the claimant living in the United Kingdom at an address in London for the nine months or so before the 30 December. The problem was that when he gave his evidence the claimant said that he was not in fact living at that address but he was living somewhere else in London with his wife. The address on the statements was the address of a relative of the appellant who had accommodated him before his marriage.
6. We found it surprising but not actually unbelievable that the appellant did not live at the address on the statements and what mattered was whether he was living in the United Kingdom.
7. It is quite plain from looking at the bank statements that they show an active account. This is not the account of somebody, for example, living outside the United Kingdom and having money sent to a bank account in the United Kingdom; it is money that is being used in the United Kingdom. It follows that although the evidence took a surprising course, it points very firmly one way and that is that at the material time the claimant was in fact living in the United Kingdom as he claims.
8. Mr Walker did not argue against this and we find the evidence on that point persuasive.
9. It follows therefore that on the point that matters, the evidence was persuasive. It is at least probable that the claimant was in the United Kingdom at the material time and that is sufficient reason to allow the claimant's appeal against the Secretary of State's decision.
10. By way of summary, we have allowed the Secretary of State's appeal, we have redetermined the appeal by allowing the claimant's appeal against the Secretary of State's decision.

**Notice of Decision**

11. The Secretary of State's appeal is allowed but we allow the claimant's appeal against the Secretary of State's decision.

*Jonathan Perkins*

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
29 March 2023