

DWP's refusal of universal credit unlawfully discriminated against claimant with pre-settled status who was unable to claim a 'Destitution Domestic Violence Concession' in 2022

GA v Secretary of State for Work and Pensions (UC)

[2024] UKUT 380 (AAC)

UA-2024-000557-USTA

Background

The claimant was a non-EU/EEA national who had pre-settled status under the EU settlement scheme in [Appendix EU to the Immigration Rules](#). Having separated from her partner due to domestic abuse, the claimant applied for universal credit on 16 August 2022.

However, the DWP decided that she did not have a right to reside for the purposes of universal credit under [regulation 9\(3\)\(c\)\(i\)](#) of the *Universal Credit Regulations 2013* (the 2013 Regulations) because she was a person who had been granted limited leave to remain in the UK by virtue of Appendix EU. The claimant was referred to Southwark Law Centre by [Rights of Women](#) and we assisted her to appeal against the refusal decision to the the First-tier Tribunal (FTT). When the FTT dismissed that appeal, we assisted her with a further appeal to the Upper Tribunal with the [Independent Monitoring Authority for the Citizens' Rights Agreements](#) joining as an intervener.

Issue before the Upper Tribunal

Whether the right to reside rules in regulation 9(3)(c)(i) of the 2013 Regulations were discriminatory at the time of the claimant's application for universal credit.

Decision

Appeal allowed.

Judge Wright accepts a concession from the Secretary of State that the claimant had been discriminated against because she was not able to benefit from the [Destitution Domestic Violence Concession \(DDVC\)](#) - that would have enabled her to satisfy the right to reside rules for universal credit - as it only applied to those who had joined their partner under [Appendix FM to the Immigration Rules](#). In addition, the Secretary of State agreed that the difference in treatment was not justified.

NB – the discriminatory aspect of the domestic abuse immigration concession was challenged in judicial review proceedings in *R(GN) v Secretary of State for the Home Department (SSHD)* where, by a consent order sealed on 13 December 2023, the then Home Secretary admitted that he had breached the claimant's rights under Article 14 of the *European Convention on Human Rights* (ECHR), read with Article 8, by treating her (as a victim of domestic violence with pre-settled status under Appendix EU) less favourably than a victim of domestic violence with limited leave to remain under [Appendix FM](#). The Immigration Rules were subsequently updated from 4 April 2024 to address this discrimination and include the 'GN cohort' into the DDVC replacement scheme (the Migrant Victims of Domestic Abuse Concession).

Reasons

Judge Wright sets out the Secretary of State's position on the discrimination claim, which agreed that the claimant was right to submit that regulation 9(3)(c)(i) should have been disapplied and invited the Upper Tribunal to allow the appeal on the basis that -

'... the refusal of universal credit was unlawfully discriminatory, contrary to Article 14 ECHR, on the grounds that the matter fell within the ambit of Article 1 Protocol 1; [the appellant] had a relevant status as a person with Appendix EU leave who had suffered domestic abuse; that she was in an analogous situation to persons with Appendix FM leave who had suffered domestic violence (who would have benefited from the DDVC and been eligible for universal credit accordingly); and that there was no justification for treating [the appellant] differently.'

Judge Wright also highlights that the Secretary of State said, so far as other individuals are concerned, that she will 'take such steps as are necessary to comply with her legal obligations'.

In response to the concession, Judge Wright says that it is properly and well made, and is consistent with the High Court's (consent) order in *R(GN) v SSHD*. Accordingly, Judge Wright allows the appeal and replaces the decision under appeal with a decision that the claimant is entitled to universal credit on the claim she made on 16 August 2022.

Note

Judge Wright also comments on two further grounds of appeal that, in summary, contended that -

- the claimant is entitled to equal treatment by virtue of her rights under the Withdrawal Agreement to the extent that it has not been answered in *Fertré v Vale of White Horse District Council* [2024] EWHC 1754 (KB) (which is itself now under appeal to the Court of Appeal); and
- the FTT failed to make adequate findings (or give adequate reasons) in support of its conclusion that *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307 'does not apply' in relation to a third country national.

Judge Wright holds that each ground will fall to be decided by the Upper Tribunal in cases where either of the points is determinative.

The Upper Tribunal's decision is available [here](#) and our full briefing on the case is available [here](#).