



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

Case Nos.: UI-2022-006023  
First-Tier Tribunal Nos:  
EA/14927/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 15<sup>th</sup> April 2024**

**Before**

**UPPER TRIBUNAL JUDGE L SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**ERMIR NIKA**

Respondent

**DECISION AND REASONS**  
**[MADE WITHOUT A HEARING PURSUANT TO**  
**RULE 39 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES**  
**2008]**

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Traynor promulgated on 24 October 2022 (“the Decision”) allowing the Appellant’s appeal against the Respondent’s decision dated 14 October 2021 refusing him status under the EU Settlement Scheme (“EUSS”) as the spouse of an EEA national.
2. The Respondent refused the Appellant’s application on the basis that his marriage was not contracted until after 31 December 2020. Accordingly, the Appellant was not a family member prior to the date of the UK’s

departure from the EU and could not benefit as such under either the rules relating to EUSS (Appendix EU) or the withdrawal agreement between the UK and the EU on the UK's departure from the EU ("the Withdrawal Agreement").

3. It was accepted that the Appellant could not establish his case as a family member. It was however argued on his behalf that he was a durable partner prior to 31 December 2020 and could succeed on that basis. The Appellant also argued that the Respondent's decision was contrary to the Withdrawal Agreement. He relied in particular on Article 18(1)(r) of the Withdrawal Agreement. Judge Traynor accepted that latter argument and determined the Appellant's appeal in his favour on that basis.
4. The Respondent appealed the Decision on the basis that the Judge had misconstrued the Withdrawal Agreement and that the Appellant derived no substantive rights thereunder. Reliance was placed on this Tribunal's decisions in Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC) ("Celik") and Batool and others (other family members: EU exit) [2022] UKUT 00219 (IAC).
5. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 9 December 2022 in the following terms:
  - "1. The application is in time.
  2. The grounds assert that the judge erred by allowing the appeal when the appellant did not fall within the scope of the Withdrawal Agreement.
  3. There is substance in the grounds. The appellant did not marry until after 31 December 2020, and he did not have a relevant document. It is difficult to see how the appellant could come within the scope of the Withdrawal Agreement. This must be explored further.
  4. Accordingly, there is an arguable error of law."

The Appellant filed a full Rule 24 Reply dated 4 January 2023 seeking to uphold the Decision.

6. The argument on which the Respondent relies was accepted by this Tribunal in Celik. The Tribunal's guidance in Celik was subsequently upheld by the Court of Appeal ([2023] EWCA Civ 921).
7. This appeal was originally listed for an error of law hearing on 8 March 2023 but adjourned prior to the hearing and stayed pending the outcome of the appeal in Celik with directions for written submissions to be made by the Secretary of State following the Court of Appeal's judgment.
8. The Respondent made written submissions following the Court of Appeal's judgment (albeit outside the time limit given but with a request for an extension of time). The Respondent relied on [56] of the Court of Appeal's judgment as determinative of the error of law and the judgment

more generally as determinative of the Appellant's appeal. The Respondent therefore maintained his challenge to the Decision.

9. The Appellant thereafter apparently indicated via his solicitors that he intended to return to Albania to apply to rejoin his spouse and therefore was agreeable to settling the appeal by agreeing to a finding that there was an error of law in the Decision, that this should be set aside and that his appeal should be dismissed. A consent order which was not signed by the Appellant or Respondent (albeit was signed by the Appellant's solicitor electronically) was filed on 8 November 2023 but since that was not a perfected order and the Respondent apparently objected to the basis on which it was signed, the appeal was not resolved at that stage.
10. The appeal was then listed before me on 12 April 2024. Late evening on the day before the hearing, a consent order signed by both parties was sent to the Tribunal. That reads as follows:

"Under Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the parties (Mr Nika and the Secretary of State) agree that the Secretary of State's appeal be dealt with in this way as Mr Nika now has leave to remain.

1. The Tribunal set aside the decision of the First-tier Tribunal which allowed Mr Nika's appeal because it was wrong in law; and
2. The Tribunal remakes the decision dismissing the appeal. "

11. I am satisfied that it is appropriate to make a decision without a hearing and in accordance with the terms of the consent order. I therefore make that decision below.

**NOTICE OF DECISION**

**The Decision of Judge Traynor promulgated on 24 October 2022 involved the making of an error of law. I therefore set aside that Decision. I re-make the decision by dismissing the Appellant's (Mr Nika's) appeal.**

L K Smith  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
12 April 2024