



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001213  
EA/04996/2021

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 6 October 2022**

**Decision & Reasons Promulgated  
On 20 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MUHAMMAD ZIAD**  
(Anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

- 1.** The appellant, a citizen of Pakistan, appealed with permission a decision of First-tier Tribunal Judge Groom ('the Judge') promulgated on 14 December 2021 in which the Judge dismissed the appellant's appeal against the refusal of an application made under the EU Settlement Scheme.
- 2.** The application was considered by reference to the requirements set out in EU 14 of Appendix EU to the Immigration Rules and refused as

the decision-maker was not satisfied that the appellant had been issued with a UK Registration Certificate or Residence Card under the EEA Regulations as a relative of an EEA national who was dependent on the EEA national. The decision-maker was not satisfied that Annex 1 of Appendix EU to the Immigration Rules was met as the appellant did not hold a relevant document. The application was therefore refused under Rule EU6 against which the appellant appealed.

3. The Judge's findings are set out from [5] of the decision under challenge which note the appellant had not been issued with an EU Registration Certificate or Registration Card and could not meet the definition of a 'dependent relative' as set out in Appendix 1 Appendix EU to the Immigration Rules and cannot meet the eligibility requirements set out in Rule EU14 of Appendix EU to the Immigration Rules. The Judge had regard to the Home Office Policy document relating to the EU Settlement Scheme and records that following oral evidence and submissions from both parties it was found that the appellant cannot meet the definition of a dependent relative and that the application was correctly refused under Rule EU6 [8].
4. The appellant sought permission to appeal on four grounds, Ground 1 claiming the Judge failed to consider the Withdrawal Agreement, Ground 2 that the Judge erred in failing to consider updated guidance on the issue of eligibility requirements, Ground 3 that the decision not to grant entry to the UK breaches the appellant's rights under the EU Treaties as they applied in the UK prior to 31 December 2020, and Ground 4, that the respondent's decision is contrary to Article 8 ECHR.
5. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal, the operative part of the grant being in the following terms:
  3. I am (just) persuaded that there is arguable merit in the ground one. Although it appears to be accepted by the Appellant in his grounds that the argument relating to the EU Withdrawal Agreement was not presented orally (and the Appellant was legally represented at the time), the grounds of appeal before the First-tier Tribunal did raise an issue whether the Respondent's decision was in accordance with that agreement. It is therefore arguable that the Judge should have considered and determined that issue. As an aside, I cannot see how the Begum judgement avails the Appellant in this case. The appellant in Begum had made an application under the Immigration (European Economic Area) Regulations 2016 ([1] of the judgement) and it was in that context that the concession recorded at [8] of the judgement must be read. The Appellant in this case had not made any application under the Regulations before their repeal. Had he done so, he would of course have had to show that he was dependent on his uncle or a member of his household before coming to the UK as well as since his arrival (the grounds only referred to the latter).
  4. The other grounds are weaker. I do not however limit the grant of permission.

## **Discussion**

- 6.** The Upper Tribunal has considered the issue of the correct interpretation of the Withdrawal Agreement and its application to cases of those claiming as a right as dependent family members of EEA nationals exercising treaty rights in the reported decisions of Celik [2020] UKUT 00220 and Batool [2022] UKUT 00219.
- 7.** In Batool it was found that an extended family member whose entry and residence was not being facilitated by the United Kingdom before 11 PM GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020. That finding is mirrored in the head note of Celik which reads:
  - (1) A person (P) in a durable relationship in the United Kingdom with an EU citizen has as such no substantive rights under the EU Withdrawal Agreement, unless P's entry and residence were being facilitated before 11pm GMT on 31 December 2020 or P had applied for such facilitation before that time.
  - (2) Where P has no such substantive right, P cannot invoke the concept of proportionality in Article 18.1(r) of the Withdrawal Agreement or the principle of fairness, in order to succeed in an appeal under the Immigration (Citizens' Rights) (EU Exit) Regulations 2020 ("the 2020 Regulations"). That includes the situation where it is likely that P would have been able to secure a date to marry the EU citizen before the time mentioned in paragraph (1) above, but for the Covid-19 pandemic.
  - (3) Regulation 9(4) of the 2020 Regulations confers a power on the First-tier Tribunal to consider a human rights ground of appeal, subject to the prohibition imposed by regulation 9(5) upon the Tribunal considering a new matter without the consent of the Secretary of State.
- 8.** The Withdrawal Agreement is a bilateral international treaty concluded between the EU and the UK which falls to be interpreted by reference to the Vienna Convention on the Law of Treaties and not by reference to domestic or EU law. As Article 4(3) of the Withdrawal Agreement spells out it is only the provisions of the Withdrawal Agreement which specifically refer to EU law or to concepts or provisions thereof which are to be interpreted in accordance with the methods and general principles of EU law.
- 9.** Article 10 the Withdrawal Agreement reflects the intentions of the EU and the UK that the Withdrawal Agreement should (a) ensure an orderly withdrawal from the UK, (b) protect only UK and EU citizens who were exercising free movement rights before a specific date and (c) provide legal certainty to citizens and economic operators as well as to judicial and administrative authorities.
- 10.** Paragraph EU 14 of Appendix EU at the Immigration Rules, which was considered by the Judge, sets out the conditions for the grant of either (a) limited leave to remain, or (b) indefinite leave to remain. This

provision also sets out the conditions for eligibility for limited leave to remain.

- 11.** The difficulty for the appellant in this case is that the provisions considered by the Judge, in relation which it was found the appellant could not satisfy, reflect the requirements of the Withdrawal Agreement – for example see Article 10. Even if this issue was raised in the grounds of appeal and the Judge did not specifically deal with it, the grounds fail to establish arguable legal error material to the decision on the basis the Judge failed to consider or apply a legal provision that was relevant or that would make any material difference to the outcome. There is no arguable merit in Ground 1.
- 12.** Ground 2 claims the Judge failed to consider up-to-date guidance in relation to eligibility requirements but fails to establish arguable legal error in the decision of the Judge in light of the fact the appellant could not succeed under the Withdrawal Agreement or any other relevant provision. There was no evidence of that entry will be granted by the Secretary of State in relation to a person such as the appellant who could not satisfy the requirements of the Withdrawal Agreement and there was no evidence that the appellant had invited the Secretary of State to do so. The respondent had the chance to consider whether such a course of action was appropriate but clearly decided it was not and hence refused the application. The appellant is effectively arguing that the Judge could effectively have decided for himself that the appellant should succeed which would have been rewriting of the requirements of the Withdrawal Agreement which is outside their immediate remit of a judge of the First-tier Tribunal. This ground is mere disagreement with the findings as noted by the judge who initially refused permission.
- 13.** Ground 3 seems to suggest that the Judge erred by not applying a right that may have existed under the EU treaties as they applied prior to 31 December 2020 when after that date, which is the relevant period for this determination, EU law did not apply. Reference at paragraph 13.2 of the grounds to article 20 of the Treaty and the Functioning of the European Union applies to members of the EU of which the UK is no longer a member. The Grounds fail to establish by reference to Article 4(3) that EU law remains applicable or to show this submission has any relevance or application.
- 14.** Ground 4 asserts the decision is contrary to article 8 but as noted in Celik article 8 can be raised but it is a new matter on which the Secretary of State's consent must be sought. The Ground seems to argue the decision is disproportionate without establishing that it was either an issue raised or that the Secretary of State's consent was sought and granted. The issue of proportionality was addressed in Celik and there is no merit in a claim made on this basis in relation to the Withdrawal Agreement.
- 15.** There is only one outcome for this appeal which is that it is going to be dismissed as it is without merit. The appellant's application is to adjourn was refused as there was no basis for granting the same especially in relation to an appeal that is bound to fail.

- 16.** If the appellant believes he has a case that will enable him to succeed pursuant to article 8 ECHR it is always open to him to make a fresh application which can be considered by the Secretary of State's representative on its merits.

**Decision**

- 17. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 18.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 6 October 2022