



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

Appeal Number: UI-2022-002712
EA/13038/2021

THE IMMIGRATION ACTS

**Determined on the papers
On 24th October 2022**

**Decision & Reasons Promulgated
On 22nd December 2022**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**EWAEN OKUNDAYE
(NO ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. On 22 September 2022, directions were issued to the effect that the Upper Tribunal was minded to find a material error of law in the decision of the First-tier Tribunal promulgated on 30 March 2022 on the basis that the First-tier Tribunal failed to apply the correct legal framework to applications under the EU Settlement Scheme and allowed the appeal under the Withdrawal Agreement in circumstances where the Appellant was not within its personal scope; for the reasons set out in Batool and others (other family members: EU exit) [2022] UKUT 00219 (IAC) and Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC). The Appellant in the present appeal had not applied for nor had his residence in the United Kingdom been facilitated before 11pm on 31 December 2020 such that he had no substantive rights under the Withdrawal Agreement; nor did he have any right to have his application made for settlement as a family member treated as an application for facilitation of residence as an

extended family member under the Immigration (European Economic Area) Regulations 2016.

2. There has been no response to those directions within the time period allotted from either party, either as to the substance of the appeal or as to its determination on the papers pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It is in all of the circumstances in the interests of justice to determine this appeal on the papers.
3. For the reasons set out in the directions issued and summarised above, I am satisfied that the decision of the First-tier Tribunal promulgated on 30 March 2022 contains a material error of law and as such must be set aside. I remake the decision to dismiss the Appellant's appeal for the same reasons.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The decision on the appeal is remade as follows:

The appeal is dismissed.

No anonymity direction is made.

Signed G Jackson

Date

24th October 2022

Upper Tribunal Judge Jackson