



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Ce-File Number: UI-2022-
003559**
**First-tier Tribunal No:
EA/00800/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 18 April 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RAFIK LAHDIRI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer

For the Respondent: Mr M Bhebhe, Legal Representative instructed by Njomane
Immigration Law Practice

Heard at Field House on 5 December 2022

DECISION AND REASONS

(extempore)

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, herein after “the claimant”, against a decision of the Secretary of State refusing an EEA residence permit. Mr Bhebhe who appeared below and before me had produced a Rule 24 notice which, for some reason, had not found its way to Ms Isherwood but she was able to consider it in the hearing room before addressing me.

2. The Secretary of State maintains that following the decision in **Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC)** it is now clear that the appeal brought by the claimant simply could not succeed.
3. It could not succeed because the claimant was not being “facilitated” within the meaning of the Rules and consequently did not have the necessary residence card. This is at the very core of the decision in **Celik** and I find completely answers the facts of this case.
4. Mr Bhebhe did not address me at length but I do record that he did not accept that **Celik** was decided correctly. He has a point that relates to procedures that had not come to Ms Isherwood’s attention but they do not address the core issue of the need to be facilitated and I am satisfied that, as far as I understand **Celik**, which I certainly intend to follow, facilitation is fundamental and if there is no facilitation proportionality simply has nothing to bite upon and the appeal had to be dismissed.
5. Unless the applicant is “facilitated” the timing of the application is not important.
6. No doubt the First-tier Tribunal no doubt would not have made the decision that it did if it had the benefit of the learning that came after the decision was promulgated.
7. I set aside the decision of the First-tier Tribunal for error of law, and having noted Mr Bhebhe’s argument that Celik is wrongly decided as a matter of public record, I substitute a decision dismissing the appeal against the Secretary of State’s refusal.

Notice of Decision

8. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the claimant’s appeal against the First-tier Tribunal’s decision.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 13 January 2023