



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003187
First-tier Tribunal No:
EA/00942/2022

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 16 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ADI KORAJ
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Mr R Claire, Counsel, instructed by Osprey Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against the decision of the Secretary of State on 17 January 2022 refusing his application for leave to settle in the United Kingdom under the EUSS scheme with particular reference to Appendix EU of HC 395.

2. The First-tier Tribunal Judge was concerned to determine if the claimant had a durable relationship with a person who, by the date of hearing, had become his wife.
3. The judge noted that the claimant's wife had pre-settled status in the United Kingdom since 23 November 2020 and the judge was satisfied that there was evidence of a "durable relationship" from August 2020 if not from July 2017. This was proved to the satisfaction of the judge by reason of cohabitation from August 2020 and giving notice of intention to marry in November 2020 and in fact marrying in May 2021.
4. The judge was also satisfied that the wedding ceremony was delayed because of difficulties arising from the well-known COVID 19 pandemic.
5. The judge directed her mind to Article 10(4) of the Withdrawal Agreement which, she decided, required the host state, in this case the United Kingdom, to facilitate entry and residence for the partner:

"where the partner resided outside the host state before the end of the transition period, provided that the relationship was durable before the end of the transition period and continues at the time the partner seeks residence."
6. The judge was satisfied that the appellant's circumstances met the definition of durable partner and allowed the appeal.
7. That decision is challenged in grounds drawn on behalf of the Secretary of State. I summarise them below. Paragraph 1.b) of the grounds is particularly apt and I set it out. It states:

"The [claimant's] application for status under the EU settlement scheme was as the family member of a relevant EEA national. It is submitted that the [claimant] could not succeed as a spouse, as the marriage took place after the specified date (31 December 2020), and so the application was considered under the durable partner route where it was also bound to fail. The rule requires a 'relevant document' as evidence that the residence has been facilitated under the EEA Regulations which had transposed Article 3.2(b) of Directive 2004/28/EC. This requires residence as a 'durable partner' to have been facilitated in accordance with national legislation. No such document was held as no successful application for facilitation had been made by the [claimant] prior to the specified date."
8. The point being made, slightly obscurely, is that the meaning of "durable partner" is prescribed and, read properly, the Rules require a document as proof of residence as a durable partner and the absence of that document is fatal to the case.
9. The claimant had tried to rely on Article 10(1)(e) of the Withdrawal Agreement but, according to the Secretary of State, was not within the benefit of the provisions because the application was not made in time.
10. The grounds are dated 26 April 2022. Since then we have the benefit of the decision of this Tribunal by its then President, Lane J, with Upper Tribunal Judge Hanson and Upper Tribunal Judge McWilliam in **Celik (EU exit; marriage; human rights) [2022] UKUT 2020 (IAC)** which gives considerable judicial authority for the interpretation favoured in the Secretary of State's grounds.

11. Mr Claire’s solicitors had prepared a “Rule 24 response to the respondent’s ground of appeal” and this was served shortly before the hearing. The Rule 24 notice appears to be a direct challenge to the grounds but does not deal with **Celik** and argues, contrary to **Celik** the proportionality is a legitimate consideration.
12. As I explained to the claimant and his wife in the hearing room, I considered that I was bound by the submissions summed up by the decision in **Celik** but I wanted to consider carefully the Rule 24 notice. I find, with respect, it is nothing but a disagreement with a decision which, if not strictly binding, is one I have every intention of following because it explains the law in detail and care.
13. This appeal is not about morals or intentions. It is a question of whether precise requirements of the Rules are met and I am quite satisfied that the judge could not have concluded on the evidence before her that they were met. She arrived at that conclusion by misunderstanding the Rules.
14. I must accede to Mr Avery’s request to find the First-tier Tribunal erred in law and set aside its decision and substitute a decision dismissing the appeal against the Secretary of State’s decision to refuse leave.

Notice of Decision

- (1) The Secretary of State’s appeal is allowed.
- (2) I set aside the decision of the First-tier Tribunal.
- (3) I substitute a decision dismissing the claimant’s appeal against the decision of the Secretary of State.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 December 2022