



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

**Case No: UI-2022-003737**  
**First-tier Tribunal No:**  
**EA/01658/2022**

**THE IMMIGRATION ACTS**

**Heard at Field House IAC**  
**On the 25<sup>th</sup> January 2023**

**Decision & Reasons Promulgated**  
**On the 13 February 2023**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL**  
**G A BLACK**

**Between**

**MR SULIMAN KHAN**

Appellant

**and**

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

Respondent

NO ANONYMITY ORDER MADE

**Representation:**

For the Appellant: Ms P. Heidar (Solicitor)

For the Respondent: Mr S. Whitwell (Home Office Presenting Officer)

**ERROR OF LAW DECISION AND REASONS**

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge Head) (FtT) promulgated on 23.6.2022 in which the appellant's appeal under the EU Settlement Scheme (EUSS) Appendix EU to the immigration Rules was dismissed.

### **Background**

2. The appellant is a citizen of Pakistan, whose date of birth is 1.8.1995. He entered the UK illegally in 2016. He applied under Appendix EU on 12.10.21 as the spouse of an EEA national who had Pre settled status; the parties married on 20.7.2021 which was after the specified date 31.12.2020. The marriage was delayed because of COVID. The appellant did not have a "relevant document", namely a valid registration certificate, family permit, or residence card issued under EEA Regulations or under the EUSS family permit as a spouse or durable partner. The respondent considered the application and refused the same on the grounds that the appellant failed to meet the definition of a "family member of a relevant EEA citizen" (as a spouse and/or durable partner - Annex 1) and was not in receipt of a relevant document. The documentary evidence was lacking and that produced failed to show a durable relationship for the period at the date of application.

### **Grounds of appeal**

3. In grounds of appeal the appellant argued that the FtT erred by failing to apply the correct provisions under Appendix EU with reference to spouse/durable partner and erred by considering only the grace periods dealing with the timeliness of the application. This had not been raised or relied on by the respondent.

### **Permission to appeal**

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Boyes on 3.8.2022. In granting permission the FTJ observed that the FTJ may well have misconstrued the applicable law.

### **Rule 24 response**

5. The respondent filed a Rule 24 response dated 2.9.22 in which it was submitted that the findings were open to the FtT to make on the evidence and the reference to the "grace period" regulations was correct with reference to her assessment of the deadline.

## **Submissions**

6. At the hearing before me Ms Heidar acknowledged that the appellant had no “relevant document” and that the UT decision of **Celik** (EU exit; marriage; human rights)[2022] UKUT 00220(IAC) had determined the issues regarding COVID. The case had been argued with reference to the Withdrawal Agreement (WA) Article 10(3) and Article 18(1). The respondent accepted that the application was valid and so the grace period provision was irrelevant. She argued that the FtT made some positive findings in the decision at [24-25] but failed to make any detailed findings of fact. The appellant now sought to rely on Article 8 which required seeking consent of the Secretary of State for a new matter (the appellant had a child).
7. In response Mr Whitwell for the Respondent submitted that any error was immaterial given the appellant had no “relevant document” and could not therefore meet the Regulations as a spouse or durable partner. **Celik** has determined the issues relating to delayed marriage because of COVID (67-68) and the application of the WA (47-48), which was not available to the appellant because he did not come within its scope as he had no relevant document. The FtT showed that she was aware of the lack of relevant document [7-12]. The FtT reached the correct decision but by the wrong route.

## **Discussion and conclusion**

8. I am satisfied that the FtT erred in law by applying the incorrect legal provisions in dismissing the appeal on the basis that the application made was out of time. The FtT considered the provisions as to timeliness of the application under what are known as the grace period provisions. There was no issue as to timeliness raised in the refusal letter and (the respondent was not represented at the hearing) and the respondent certified the application as valid. The respondent clearly set out the reasons why the application was refused in the letter dated 2.2.2022, which was fully set out in the decision at [7]. The appellant failed to produce sufficient evidence to show that he met the definition as a spouse and/or was in a durable relationship, and he held no relevant document. Ms Heidar accepted that the appellant had no relevant document. The FtT summarised the appellant’s case at [8-12] and the findings were set out from [18-26].
9. Since the appeal before the FtT, the UT has clarified the law as to delayed marriage because of COVID and further clarified the position as to the application of the WA (see headnote (1)-(3) of **Celik** and in **Batool & others(other family members;EU exit) [2022] UKUT 00219 (IAC)**). On the evidence before the FtT and applying **Celik**, I am satisfied that the

appellant was not and would not be able to meet the requirements under Appendix EU for lack of a “relevant document”. The FtT erred in law by applying the wrong provisions in dismissing the appeal and failed to consider the evidence with reference to the actual reasons for the refusal of the application.

10. There is a material error of law in the decision which shall be set aside.

**Re making**

11. I have decided that the appropriate course of action is to set aside the decision and to go on the remake the decision and substituting the same by dismissing the appeal on the grounds that the appellant has no relevant document and the WA cannot apply to him. As to Article 8 I find that the appellant has made no application on the basis of family life and it remains the position of the respondent that such matters are to be considered under Appendix FM, this is a course that remains open to the appellant to take.

Signed

Date 30.1.2023

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER  
NO FEE AWARD

Signed

Date 30.1.2023

GA Black

Deputy Judge of the Upper Tribunal