



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

Appeal Numbers: UI-2022-004027  
[EA/02600/2022]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 December 2022**

**Decision & Reasons Promulgated  
On 17 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

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

Appellant

**and**

**FAYCAL ANIS LERGAM  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms H. Gilmour, Senior Home Office Presenting Officer  
For the Respondent: No appearance and not represented

**DECISION AND REASONS**

1. Although the appellant in these proceedings is the Secretary of State, for convenience I continue to refer to the parties as they were before the First-tier Tribunal.
2. Neither the appellant nor anyone on his behalf attended the hearing, which was listed as a hybrid hearing at the request of the respondent in the light of a national rail strike. It was not in fact expected that there would be any appearance by or on behalf of the appellant as will be clear from what follows. I was satisfied that it was appropriate to proceed with

the appeal in the absence of the appellant pursuant to rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008, given the circumstances and given that I was satisfied that the appellant had had notice of the hearing. Ms Gilmour appeared remotely.

3. On 28 June 2021 the appellant made an application for settled status under the EU Settlement Scheme (“EUSS”). That application was refused in a decision dated 22 February 2022 with reference to paragraphs EU11 and 14 of the Immigration Rules (“the Rules”). The appellant appealed against that decision and his appeal came before First-tier Tribunal Shakespeare (“the Ftj”) at a hearing on 15 July 2022 following which, in a decision promulgated on 26 July 2022, the appeal was allowed.
4. The respondent’s grounds of appeal in relation to Judge Shakespeare’s decision, in broad summary, contend that she erred in law in allowing the appeal with reference to the Withdrawal Agreement (“WA”). The appellant was not married to his spouse before the specified date and his application was made on 28 June 2021. It is contended that the appellant was not residing in accordance with EU law at the ‘specified date’ (31 December 2020) as he had not had his residence facilitated in accordance with national legislation at that date. He could not, therefore, benefit from Article 18(1)(r) of the WA in terms of proportionality.
5. Therefore, the grounds say, because the appellant was not residing within the host State prior to the end of the transition period, in accordance with the Immigration (European Economic Area) Regulations 2016, he does not come within the ‘personal scope’ of the Withdrawal Agreement. His residence as an extended family member was never facilitated prior to the end of the transition period, as no application had ever been made prior to 31 December 2020.
6. It is also said that the Ftj was wrong to conclude that the appellant made a timely application for settlement, seemingly within the ‘grace period’, thus misunderstanding what that grace period actually means.
7. In submissions Ms Gilmour referred to the decision in *Celik (EU exit; marriage; human rights)* [2022] UKUT 00220 (IAC).
8. Prior to the hearing the appellant’s representatives, by email dated 5 October 2022, stated that they wished to “withdraw the appeal”. In an email dated 10 October 2022 to the Tribunal and to the respondent the representatives stated that the appellant “no longer opposes the Home Office grounds of appeal”. The appellant also notified the Tribunal that the appellant had now been granted leave to remain in any event. Documentary evidence of that fact was provided to the Tribunal the day before the hearing showing that he had been granted leave on 2 November 2022 for a period of 30 months.

### **Assessment and conclusions**

9. At the hearing, with Ms Gilmour's assistance, the issue of abandonment pursuant to s.104(4A) of the Nationality, Immigration and Asylum Act ("the 2002 Act") was considered on the basis that the appellant had been granted leave to remain. However, it is apparent that the appellant's is not an appeal under s.82(1) of that Act and the abandonment provisions do not apply.
10. Next, I considered rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (withdrawal of case) but concluded that whilst an appellant who is a respondent to an appeal can certainly withdraw his case, the outcome of the appeal may lack clarity if it is brought to an end in that way.
11. At the conclusion of the hearing I announced that I was satisfied that the FtJ erred in law in allowing the appeal, that her decision was to be set aside, and that the decision was re-made dismissing the appeal. My reasons can be expressed briefly in the circumstances.
12. I agree with the arguments advanced in the grounds as to why the appellant cannot benefit from the WA. That the respondent's grounds are correct is supported by the decision in *Celik* where at [52] and [53] it states as follows:
  - "52. There can be no doubt that the appellant's residence in the United Kingdom was not facilitated by the respondent before 11pm on 31 December 2020. It was not enough that the appellant may, by that time, have been in a durable relationship with the person whom he married in 2021. Unlike spouses of EU citizens, extended family members enjoyed no right, as such, of residence under the EU free movement legislation. The rights of extended family members arose only upon their residence being facilitated by the respondent, as evidenced by the issue of a residence permit, registration certificate or a residence card: regulation 7(3) and regulation 7(5) of the 2016 Regulations.
  53. If the appellant had applied for facilitation of entry and residence before the end of the transition period, Article 10.3 would have brought him within the scope of that Article, provided that such residence was being facilitated by the respondent "in accordance with ... national legislation thereafter". This is not, however, the position. For an application to have been validly made in this regard, it needed to have been made in accordance with regulation 21 of the 2016 Regulations. That required an application to be submitted online, using the relevant pages of www.gov.uk, by post or in person, using the relevant application form specified by the respondent; and accompanied by the applicable fee."
13. Having considered the decision in *Celik* and its analysis, I respectfully agree with it and apply it to the circumstances of this appeal. I, of course, have the benefit of the decision and analysis in *Celik* which the FtJ did not have. Her analysis of the complex legal framework applicable to this

appeal without the benefit of any authoritative decision directly on point is understandable, but nevertheless incorrect.

14. In the circumstances, I am satisfied that Judge Shakespeare erred in law in allowing the appeal for the reasons advanced in the grounds of appeal before me. That error of law is such as to require the decision to be set aside. In re-making the decision I dismiss the appeal.

### ***Decision***

15. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the decision is re-made dismissing the appeal.

Signed A. M. Kopieczek

16/12/2022

Upper Tribunal Judge Kopieczek