



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001941
First-tier Tribunal No:
EA/07709/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 11 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LUTFI AXHAMI

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer

For the Respondent: Mr J Trussler, Counsel instructed by TNS Legal Services

DECISION AND REASONS

1. I see no need for and do not make any order restricting publicity about this appeal.
2. 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 refusing him “pre-settled status”

under Rule EU14 of Appendix EU of the Immigration Rules based on his being in a durable relationship with his partner, a citizen of Romania exercising treaty rights in the United Kingdom.

3. The decision of the First-tier Tribunal was made without the benefit of the guidance given by this Tribunal in the case of **Celik [2002] UKUT 00220** which, even if it does not strictly bind me, I intend to follow. It was the Secretary of State's case, encapsulated in ground 2, that it was immaterial whether the claimant and his partner were in a "durable" relationship, at least in a colloquial sense. The claimant did not come within the scheme of the Rules because his partner's residence had not been "facilitated." This, it was said, was fatal to the application. The facts simply did not satisfy the requirements of the Rules.
4. Mr Trussler, helpfully and professionally, saved considerable time by conceding much of the Secretary of State's case. He relied on a short point made clearly in a skeleton argument provided for the hearing which, he said, showed that the Secretary of State had a policy to applying the Rule more generously than the terms required and that policy should have been considered here.
5. He referred to the refusal letter and set out a particular paragraph which states:

"The required evidence of a family relationship for a durable partner of a relevant EEA citizen is a valid family permit or residence card issued under the EEA Regulations (or by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man) as the durable partner of that EEA citizen **and, where the applicant does not have a documented right of permanent residence, evidence which satisfies the Secretary of State that the durable 1 of 4 1 partnership continues to subsist**".
6. He said this clearly showed that there was room for a more generous policy because it clearly provided for the possibility of allowing an application for someone who did not have the necessary documents. He then referred to further guidance which emphasised the importance of having a relevant document but also said: "If you do not have a relevant document you will need to show evidence ...".
7. Read in context this followed reference to a partner of a person in Northern Ireland being "unlikely to have a relevant document". However, Mr Trussler argued this did not limit this kind of discretion to Northern Ireland cases.
8. Ms Ahmed submitted that the construction urged by Mr Trussler was inherently unlikely to be right. It would, she said, be "incongruent" to adopt a Rule that required a document and then say that the document was not required. She submitted it was so unlikely to be right that I should not accept the submission.
9. Ms Ahmed then referred to a decision of the Court of Appeal in **Macastena v SSHD [2018] EWCA Civ 1558** where, dealing with an analogous application, the Court of Appeal emphasised the importance of a person having a residence card. The point was the residence card followed a period of enquiry and was good evidence of the person's status. It was not a requirement that could be waived but was rather a fundamental requirement of the Rules and meant more than simply showing cohabitation or whatever.

10. That was a helpful analogy but not really all that important. I prefer simply to look at the face of the document and I cannot accept Mr Trussler's contention that the policy was intended to move away from the basic requirement of having a residence card.
11. I appreciate the economy of Mr Trussler's submission but I am not persuaded by it.
12. For the reasons elucidated in **Celik** I find the First-tier Tribunal, for very understandable reasons, was wholly wrong. I set aside its decision and I substitute a decision dismissing the appeal against the Secretary of State's decision.

Notice of Decision

The Secretary of State's appeal is allowed. I set aside the decision of the First-tier Tribunal and I substitute a decision dismissing the appeal against the Secretary of State's decision.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 15 December 2022