



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002333
First-tier Tribunal No: EA/13872/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 26 March 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

GRANIT BARDHI
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 19 January 2023

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Bonavero promulgated on 8 February 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Dainty on 26 April 2022.

Anonymity

3. No direction has been made previously, and there is no reason for one now.

Background

4. The appellant, who is a national of Albania, made an application under the European Union Settlement Scheme on 23 December 2020 as the durable partner of an EEA citizen. That application was refused on 13 September 2021 essentially because the appellant had not shown that he had not provided the required evidence of family relationship in the form of a relevant document, either an EEA family permit or residence card.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge heard that the appellant had married a Romanian national on 29 March 2021, that is after the application under the EUSS was made. The parties agreed that the sole issue for the judge was whether the appellant met the definition of 'durable partner' set out in Appendix EU. It was argued on the appellant's behalf that he met the definition of durable partner set out in paragraph b(ii)(bb)(aaa) of Appendix EU. The judge found that the appellant could not satisfy this definition for reasons set out in the decision and reasons.

The grounds of appeal

6. The grounds of appeal argued that the judge erred in his interpretation of paragraph (b)(ii)(bb)(aaa) in relation to the definition of 'Durable Partner', under Annex 1 of Appendix EU and contend that the appeal should have been allowed, given the judge's conclusions at [13-14] of the decision and reasons.
7. Permission to appeal was granted, albeit the judge's comments indicated otherwise, as set out below.

The judge considered the relevant provisions and gave reasons. The provision of a relevant document is central to the scheme. It is difficult to see the rationale, and none is elucidated in grounds, which are very brief, why a person who arrived in the UK with no relevant document and lawful grounds to stay should avoid the need for a relevant document. The judge has worked through the wording of the definition of durable partner in Appendix EU and there is no arguable error of law.

8. The appeal was opposed in the respondent's Rule 24 response, dated 26 May 2022 which made the following point.

It is clear from the "reasons" that permission has been granted in error and that the intention of the judge was to refuse permission. The Secretary of State considers that there was no error by the First Tier Tribunal and that they correctly followed the provisions set out in Appendix EU.

The hearing

9. There was no attendance by or on behalf of the appellant. Several attempts were made by my clerk to contact the appellant's solicitors, but the telephone went unanswered. In view of the obvious indication that permission had been granted in error, the developments in the case law since this appeal was heard on 19 January 2022 and the absence of any explanation for the absence of the appellant or his representative, I was satisfied it would not be unfair on the appellant to proceed to determine whether there was an error of law in his

absence. I announced that there was no error of law in the decision of the First-tier Tribunal and that the appeal was dismissed.

Discussion

10. In *Celik* (EU exit: marriage; human rights) [2022] UKUT 00220, the headnote reads as follows:

“(1) A person (P) in a durable relationship in the United Kingdom with an EU citizen has as such no substantive rights under the EU Withdrawal Agreement, unless P’s entry and residence were being facilitated before 11pm GMT on 31 December 2020 or P had applied for such facilitation before that time.

(2) Where P has no such substantive right, P cannot invoke the concept of proportionality in Article 18.1(r) of the Withdrawal Agreement or the principle of fairness, in order to succeed in an appeal under the Immigration (Citizens’ Rights) (EU Exit) Regulations 2020 (“the 2020 Regulations”). That includes the situation where it is likely that P would have been able to secure a date to marry the EU citizen before the time mentioned in paragraph (1) above, but for the Covid-19 pandemic.

(3) Regulation 9(4) of the 2020 Regulations confers a power on the First-tier Tribunal to consider a human rights ground of appeal, subject to the prohibition imposed by regulation 9(5) upon the Tribunal considering a new matter without the consent of the Secretary of State.”

11. The judge made no error in finding that the appellant did not fall within the terms of Appendix EU. In Annex 1 of Appendix EU the definition of a durable partner includes, at (b)(i), the requirement that the applicant holds a ‘relevant document as the durable partner of the relevant EEA citizen for the period of residence relied upon. Annex 1 of Appendix EU defines a relevant document as follows.

(a)(i)(aa) a family permit (or a letter from the Secretary of State, issued after 30 June 2021, confirming their qualification for one), registration certificate, residence card, document certifying permanent residence, permanent residence card or derivative residence card issued by the UK under the EEA Regulations on the basis of an application made under the EEA Regulations before (in the case, where the applicant is not a dependent relative, of a family permit) 1 July 2021 and otherwise before the specified date;

12. The judge considered the arguments made on the appellant’s behalf and rightly concluded at [12] that the appellant’s circumstances did not meet the circumstances set out in paragraph (b)(ii)(bb)(aaa) of Appendix EU because the appellant had never satisfied the Secretary of State that he had ever been in a durable relationship.

13. The First-tier Tribunal judge properly considered the provisions of Appendix EU. The appellant’s application for status under the EU Settlement Scheme was as the family member of a relevant EEA national. The respondent could not succeed as a spouse, as the marriage took place after the specified date of 31 December 2020, and so the application was considered under the durable partner route.

The respondent could not succeed under the durable partner route because the Rules require a “relevant document” as evidence that residence was facilitated under the EEA regulations. The respondent held no such document because no application for facilitation had ever been made. Accordingly, the judge provided adequate reasons to support the findings that the appellant could not meet the requirements of the Appendix EU. Those findings are fully in accordance with the decision in *Celik*.

14. The appeal is dismissed.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 January 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email