



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

Appeal Number: UI-2022-002199  
EA/13940/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 January 2023**

**Decision & Reasons Promulgated  
On 21 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

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

Appellant/Respondent

**and**

**NAZMI TAHIRAJ  
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Appellant

**Representation:**

For the Appellant: Ms. S Lecointe, Senior Presenting Officer

For the Respondent: Mr. J Collins, Counsel, instructed by Sentinel Solicitors

**DECISION AND REASONS**

**Introduction**

1. For the purpose of this decision, the parties are as above, but I refer to the Secretary of State for the Home Department as the respondent and to Mr. Tahiraj as the appellant, reflecting their positions before the First-tier Tribunal.
2. The respondent appeals against a decision of Judge of the First-tier Tribunal Raymond ('the Judge') sent to the parties on 15 March 2022 by

which the appellant's appeal against a decision refusing to issue him with status under the European Union Settlement Scheme ('EUSS') was allowed on an identified, limited basis.

### **Background**

3. The appellant is a national of Albania and is presently aged 27. He entered the United Kingdom unlawfully. His wife, Mrs. Dimyana Ivanova, is a national of Bulgaria. In November 2020 she secured limited leave to remain in this country under the EUSS. The appellant states that he met Mrs. Ivanova via social media in May 2020, and they then met in person in June 2020. They entered a relationship by renting a room together in Walthamstow in September 2020.
4. By means of an application dated 4 June 2021 the appellant applied for status under the EUSS as the durable partner of an EEA citizen. The application was made after the United Kingdom left the European Union at 23.00 on 31 December 2020.
5. The appellant details in his witness statement, dated 9 February 2022, that the couple decided to get married in November 2020 and tried to call the local registry office in Waltham Forest but were unable to get through. When they finally got through to talk to someone, they were informed that no wedding bookings were being taken because of lockdown restrictions. On 19 April 2021, they booked an appointment to give notice and subsequently they were given an appointment date. They were married at Haringey Registry Office on 29 June 2021. The marriage took place after the appellant's EUSS application.
6. The respondent refused the application by a decision dated 15 September 2021, observing that the appellant had not provided sufficient evidence to confirm that he was a family member of a relevant EEA citizen prior to the time the United Kingdom left the European Union. Consideration was also given to whether the appellant satisfied the requirements of an 'other family member', consequent to being in a durable relationship with a relevant EEA citizen. However, it was noted that the appellant had not been issued with a family permit or residence card under the Immigration (European Economic Area) Regulations 2016. Consequently, the appellant did not meet the requirements for either settled or pre-settled status under the EUSS.

### **First-tier Tribunal Decision**

7. The appellant appealed to the First-tier Tribunal and the hearing before the Judge was conducted as a hybrid hearing at Hatton Cross on 22 February 2022. The appellant and his wife did not give evidence. They relied upon their witness statements, and submissions made by counsel, Mr. Collins. The core of the appellant's case before the Judge was that but for the restrictions imposed by the Covid-19 pandemic, he would have married his wife before the United Kingdom left the European Union.

8. Mr. Collins addressed me in respect of the appellant's concern that elements of the Judge's decision were factual findings, or simply observations. Having carefully considered the decision I am satisfied that reference to a lack of evidence of independent communication between the couple and their families and friends, at [28]-[29], is observation, as are references made in respect of a council tax bill and a utility bill, at [10]. The latter observations were made prior to the section of the Judge's reasoning entitled 'findings'. I further accept Mr. Collins point that the reference to the couple commencing their relationship with unseemly haste, at [38], is an observation made without any adequate reasoning.
9. In his decision, the Judge noted, at [3] and [20], that bank statements evidenced the appellant trying to make money from a serious, problematic gambling habit. Further concerns were raised by the significant sums of money going in and out of the wife's account, with evidence of her enjoying only modest salary payments, at [17]-[22]. The Judge was satisfied that the use of the account by two other people established that third parties had a stake in the bank account, at [35]. The Judge considered that the identifiable use of the wife's bank account established that both she and the appellant had alternative financial resources, separate from a shared married life, which they had chosen not to reveal to the First-tier Tribunal. He noted evidence of payment in the wife's name for a different tenancy through Keats Lettings, establishing that Ms. Ivanova was not living with the appellant, at [14]-[15]. The Judge concluded that the bank account was being used principally to establish a fictitious connection between husband and wife, seeking to establish that they reside together, at [36].
10. I am satisfied that the Judge made clear, adverse findings as to the genuineness of the relationship. Mr. Collins appropriately accepted that the Judge gave adequate reasons for his conclusion. Though observing that Ms. Ivanova is now pregnant, he accepted that the present state of affairs was not relevant to the lawfulness of the Judge's conclusions on the evidence placed before him in February 2022.
11. The Judge proceeded to allow the appeal on a narrow basis, at [41]-[42]:
  - '41. The preceding features which are deeply damaging to the credibility of the appellant and Ms. Ivanova, are issues for the respondent to consider, as I only allow the appeal on the limited basis that the application was made with a valid marriage certificate within the grace period, before the required date of 1 July 2021 [sic], in a context where Article 18 requires under the Withdrawal Agreement that a proportionate approach is taken to the issue of documents.
  42. The refusal was not therefore in accordance with the Withdrawal Agreement and Appendix EU, as explained within the policy of the respondent, and the appeal succeeds on that limited basis only.'

## **Grounds of Appeal**

12. The core of the respondent's grounds of appeal are that the Judge erred in law by failing to properly consider the provisions of Appendix EU of the Immigration Rules and the terms of the Withdrawal Agreement. In particular, 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 bound to fail because the relevant rule required a 'relevant document', as defined. The appellant does not possess a relevant document. The Judge erred in concluding that the 'grace period' extended the time limit in which the appellant could become lawfully resident under the 2016 Regulations to a time after the United Kingdom left the European Union. Consequently, the Judge made several material errors of law.
13. Following the grant of permission to appeal by Judge of the First-tier Tribunal Handler on 29 April 2022, Upper Tribunal Judge Jackson issued directions that were sent to the parties on 14 September 2022, observing the decision of the Presidential panel in *Celik (EU exit; marriage; human rights)* [2022] UKUT 00220 (IAC). Judge Jackson expressed her preliminary view that consequent to the decision in *Celik* the Judge's decision was affected by material error of law, having failed to apply the correct legal framework to applications under the EUSS where the marriage took place after 31 December 2020 and, additionally, the appellant's entry and residence had not been facilitated as a durable partner before the same date.
14. Judge Jackson directed the parties to write to the Upper Tribunal if they opposed the setting aside of the First-tier Tribunal decision within 21 days, otherwise a decision would be made to set aside without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. If an objection was made, the appeal would be listed for an oral error of law hearing.
15. By email correspondence dated 21 September 2022, the respondent agreed to Judge Jackson's proposal.
16. The appellant's solicitors wrote to the Upper Tribunal on 26 September 2022, opposing the proposal. Accompanying the letter was a 'response to directions' drafted by Mr. Collins, dated 26 September 2022, setting out their client's position.

## **Discussion**

17. The appeal was allowed on a very narrow, and mistaken ground. Firstly, the Judge erred in his understanding that the marriage certificate accompanied the application. It did not, as the marriage took place over three weeks after the application was made. In any event, the Judge materially erred in his understanding of the 'grace period' granted for the making of an application under the EUSS.
18. Regulation 2 of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 provided for a deadline of 30 June

2021 for the submission of applications in compliance with article 18(1)(b) of the Withdrawal Agreement which itself refers to a deadline for the submission of applications not less than six months from the end of the 'transition period'. Regulation 2 of the 2020 Regulations is consistent with article 18(1)(b) and established a grace period in respect of making an application under the EUSS.

19. Regulation 3 of the 2020 Regulations makes provision for the 2016 Regulations to continue to have effect in respect of their revocation on 31 December 2020 in relation to a relevant person during the grace period, such period being defined as being the period immediately after 'IP completion day' - 31 December 2020 - and coming to an end at the 'application deadline' - 30 June 2021.
20. The appellant was not married to Mrs. Ivanova before 23.00 on 31 December 2020, nor had he sought facilitation as a durable partner by this time. He was therefore not a 'relevant person' for the purpose of the EUSS. Since he was not, and could not be, a relevant person within the definition of regulation 3(6) of the 2020 Regulations, it is clear from regulation 3(2) that the provisions of the 2016 Regulations had no application. The relevant saving provisions established in respect of certain provisions of the 2016 Regulations applied during the grace period 'whilst applications are finally determined', but this requires the appellant to be a relevant person in respect of the application.
21. The appellant secured no benefit from the Withdrawal Agreement as a family member, because he was not married to Ms. Ivanova on or before 31 December 2020.
22. I find that the Judge erred materially by mistakenly concluding that the that a valid application made within the 'grace period' could satisfy Appendix EU in this matter. The time period in which an application could be made under the EUSS, expiring on 30 June 2021, is separate to the implementation period, or specified date, which expired on 31 December 2020.
23. The decision of the Judge is therefore properly to be set aside for material error of law.
24. Mr. Collins accepted on behalf of the appellant that the reported decision of *Celik* could properly be applied in this matter. Mr. Collins tentatively suggested that a stay of proceedings would be appropriate pending consideration by the Court of Appeal of an outstanding application for permission to appeal in *Celik*, but he acknowledged the general principle confirmed by the Court of Appeal in *B (Sudan) v. Secretary of State for the Home Department* [2013] EWCA Civ 912 that the power to stay immigration cases pending a future appellate decision has to be exercised cautiously and only when necessary, in the interests of justice. Such interests come nowhere close to existing in this matter.

25. Whilst requesting this decision note the appellant's position that he did not agree with the identification of law established in *Celik*, Mr. Collins properly acknowledged that at the present time that this Tribunal would apply the approach confirmed by the reported decision.
26. Remaking the decision, I conclude that the legal framework in respect of the appellant's application under the EUSS, with his marriage taking place after 31 December 2020, establishes that he was not a family member at either the date of application, or at the date of decision. In addition, as his entry and residence had not been facilitated as a durable partner before the 31 December 2020, he cannot succeed under the EUSS.
27. In the circumstances, the appeal is properly to be dismissed.

### **Notice of decision**

28. The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision promulgated on 15 March 2022 is set aside pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2017.
29. The decision is remade and the appeal under the European Union Settlement Scheme is dismissed.

Signed: D O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Date: 11 January 2023

### **TO THE RESPONDENT** **FEE AWARD**

The appeal is dismissed and so no fee can be awarded.

Signed: D O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Date: 11 January 2023