



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003742
First-tier Tribunal No:
EA/16612/2021

Extempore

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

Gurdev Kumar
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Richardson, Paul John & Co Solicitors
For the Respondent: Mrs A Nolan, Home Office Presenting Officer

Heard at Field House on 21 November 2022¹

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing Mr Kumar's appeal against a decision of the Secretary of State to refuse him a family permit under the EU Settlement Scheme. For the avoidance of confusion only, I refer to Mr Kumar as the appellant, as he was before the First-tier Tribunal, but it is the Secretary of State who brings this appeal.

¹ Please note that, owing to an administrative error, this decision was not transcribed until 27 June 2023.

2. Materially in this case, the appellant was married to his now spouse in February 2021, it having proved difficult for them to obtain a wedding date before that. There is no challenge to the facts of the appeal as set out in the decision of the First-tier Tribunal.
3. The judge allowed the appeal, having directed himself as to the impact of Article 18 of the Withdrawal Agreement, at paragraph 21 of his decision. He concluded that the appellant and his now wife, who had been together for six months, had decided to marry, had made every attempt to marry and due to circumstances wholly beyond their control, engendered by the extraordinary circumstances of a global pandemic, had been unable to do so for a period of about six months despite their best efforts. They then did secure a marriage within two months of the specified date but by then it was eight months after their decision to marry and an earlier attempt to do so. He found that it was not easy to see that the respondent has viewed the decision to refuse either flexibly or pragmatically. In a case of a genuine marriage and one celebrated shortly after the specified date of 31 December 2020, where there had been real efforts to marry for at least six months, I considered that the decision taken and now maintained was disproportionate.
4. The Secretary of State sought permission to appeal against that decision on the basis that the judge had misapplied the law. Permission was granted.
5. Since that grant of permission, the Upper Tribunal has handed down Celik (EU exit; marriage; human rights) [2022] UKUT 220, the decision of the president. Mrs Nolan, in effect, relies on that. Mr Richardson, I think fairly and candidly accepts that it is likely that I would follow that and makes no submissions for a basis that I should not follow it but does seek to submit that the findings of fact, set out at paragraphs 18 and 19 of the First-tier Tribunal's decision should be preserved.
6. Having considered this matter, I am satisfied that there is no effective challenge to the findings of fact at paragraphs 18 and 19 of the decision and they are preserved. I consider that the factual scenario in this case is on all fours with Celik and I adopt the reasoning set out in that decision.
7. Accordingly, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside. Given that the appellant had not made any application to have his residence facilitated and that the marriage postdates the date of withdrawal from the EU, I consider in light of Celik that the decision must be remade by dismissing the appeal and accordingly, for these reasons, I do so.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by dismissing the appeal on all grounds.

Signed

Date 27 June 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal