



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-005153

First-tier Tribunal No: EA/12481/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

29<sup>th</sup> September 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**[T V O]**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Burrett, Counsel

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 6 September 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant a national of Nigeria, date of birth 26 February 1999, appealed against the Respondent's decision dated 6 August 2021 to refuse an application under the EU Settlement Scheme (as a returning resident of the EEA) because the Respondent was not satisfied that the Appellant met the requirements of EU11 and EU14 for he had not provided a valid family permit or residence card issued under the EEA Regulations as the spouse of an EEA national. The Appellant had, it seemed, not provided evidence to confirm he was a family member on 31 December 2020 (the relevant date) as his marriage certificate showed the marriage took place on 30 March 2021. The EUSS scheme in relation to durable partner's eligibility was also considered and refused for the same reasons of the lack of the appropriate documentation.
2. His appeal against that decision came before First-tier Tribunal Judge Gribble at which the Appellant was represented but there was no Home Office Presenting Officer or representation. First-tier Tribunal Judge Gribble, in a decision dated 31 March 2022, allowed the appeal and found that the Appellant did not satisfy the definition of durable partner for the purposes of Appendix EU but went on to conclude that the Appellant was a durable partner of an EEA national as at 31 December 2020 and that the additional requirements for a particular document interfered with the intentions of the Withdrawal Agreement and it followed concluded that the Respondent's decision was disproportionate and breached the Withdrawal Agreement.
3. Permission to appeal to the Upper Tribunal was given by First-tier Tribunal Judge Beach on 12 September 2022. The basis of permission was expressed as follows:

"The First-tier Tribunal Judge finds that the Appellant was not a spouse or a durable partner at the relevant date. The First-tier Tribunal Judge finds that the Appellant is protected by the terms of the Withdrawal Agreement. However, the Appellant had not applied for facilitation of entry and residence prior to the relevant date. It is arguable therefore that the First-tier Tribunal Judge erred in her application of the Withdrawal Agreement and that this error affected her later findings regarding proportionality."

A relevant fact is that, since the date of Judge Gribble's decision, the Upper Tribunal reached a decision on the EUSS scheme promulgated on 19 July 2022 in the case of Celik (EU Exit; marriage; human rights) [2022] UKUT 220 (IAC) which identified that there were no substantive rights under the EU Withdrawal Agreement unless the person's entry and residence had been facilitated before 11 pm GMT on 31 December 2020 or the person had applied for facilitation before that time. The second headnote records that where a person has no substantive right, the person 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. It was clear that Celik was appealed to the Court of Appeal who, on 31 July 2023, confirmed that the Upper Tribunal's guidance was correct. The Court of Appeal decision was [2023] EWCA Civ 921 dated 31 July 2023.

4. Accordingly, I concluded that the First-tier Judge had materially erred in law in concluding, on what were undisputed facts, the requirement of additional document. To do otherwise. Interferes with the primary aim of the Withdrawal Agreement. It also follows that the Judge erred in concluding that the Respondent's decision was disproportionate with reference to Article 18(1)(r) as referred to in headnote 2 of the Tribunal decision in Celik.

5. Mr Burrett for the Appellant, who did not appear below, sought to argue a general point that fairness warranted a wider consideration than the requirements of the Rules but I do not accept that proposition in the light of the cases of Celik to which I have referred. He did not appear below and I did not find that his submissions added any basis to conclude that the decision in Celik left open the door to his arguments.
6. The appeal of the Secretary of State is allowed. The Original Tribunal decision of Judge Gribble does not stand. The Respondent's decision of 6 August 2021 stands

A handwritten signature in black ink, appearing to read 'J. DAUGY', is written in a cursive style.

Judge of the Upper Tribunal  
Immigration and Asylum Chamber