



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001063

First-tier Tribunal No: EA/03835/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 December 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

RAHMAT ULLAH RIDOY
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Direct Access Counsel

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 21 November 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born on 10th April 1989. He arrived in the UK as a Tier 4 student migrant in October 2009. He applied for pre-settled status under the EUSS on 9th June 2021. This application was refused on 22nd April 2022. His appeal against the decision was dismissed by First-tier Tribunal Judge Beach in a determination promulgated on the 16th November 2022.
2. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 13th October 2023 on the basis that it was arguable that the First-tier judge had erred in law as it was arguable that the application for a

residence permit under the 2016 EEA Regulations refused on 5th September 2019 had not been validly refused as it was arguable that the refusal notice had not complied with the Immigration (Notices) Regulations 2003 as it had not informed the appellant of his appeal rights. As a result it was arguable that he was a person who had applied for facilitation of his EEA rights prior to 31st December 2020 and was therefore a person who benefited from Article 10.3 of the EU Withdrawal Agreement.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide whether any such error was material and whether the decision should be set aside.

Submissions & Conclusions – Error of Law

4. The first ground of appeal explains that the appellant had given out of time notice of appeal against the decision of 5th September 2019, refusing him a residence permit as a durable partner, on 29th September 2022. It is stated that that appeal had not yet been given a decision on the out of time issue or been listed for hearing at the date of hearing before the First-tier Tribunal. It is argued that in accordance with Banger (EEA:EFM – Right of Appeal) 2019 UKUT 194 that an applicant was entitled to a right of appeal in relation to any decision refusing an extended family member made before 29th March 2019 without a right of appeal and so such a person could apply to appeal with an application for an extension of time to the First-tier Tribunal. It is argued that the First-tier Tribunal erred in law because at paragraph 38 of the decision the First-tier Tribunal found that the appellant had not made an unresolved application for facilitation prior to 31st December 2020 and so was not within the scope of the Withdrawal Agreement, when in fact he was within the ratio of Celik (EU exit, marriage, human rights) [2022] UKUT 00220, which has since been upheld by the Court of Appeal. However Mr Hawkin accepted before me that the appeal against the decision refusing a residence permit dated 5th September 2019 was not admitted by the First-tier Tribunal on 28th November 2022, and so I find that any potential error of law on this basis is no longer be material.
5. Mr Hawkin also pursued the second ground of appeal which was that the appellant ought to have been allowed benefit of the respondent's policy as set out in the Guidance on the EUSS with respect to evidence of relationship to an EU citizen. This, it is argued, is only dealt with at paragraph 42 of the decision of the First-tier Tribunal which relates to Article 8 ECHR which is wrong in law as the guidance should clearly have been taken into account when considering the Immigration Rules and the appellant's ability to meet the requirements of the definition of durable partner. I find however it is not arguable that this policy document makes it possible for the appellant to succeed in his appeal, as I find the guidance relates to unmarried partners of a person of Northern Ireland as it reads: "If you're the unmarried (durable) partner

of a person of Northern Ireland and have yet to apply, you're unlikely to have a relevant document. If you do not have a relevant document, you'll need to show evidence:..."(It then goes on to explain what is needed to be evidence and how this might be done). This policy could not therefore have assisted the appellant in showing that he met the Immigration Rules at Appendix EU, and in particular the definition of a durable partner as he makes no claim to be the durable partner of a person of Northern Ireland.

6. Mr Hawkin accepted that this appellant's facts were not on all fours with Siddiq (other family members: EU exit) Bangladesh [2023] UKUT 47 as the appeal in this case arises from a refusal of an application made on 9th June 2021. I find that it is not possible to argue that the application should have been treated as one under the Immigration (EEA) Regulations 2016 for facilitation as it was not made before 31st December 2020. I further find that in any case both Siddiq and Batool and Ors (other family members: EU exit) [2022] UKUT 219 found that there was no duty on the respondent to treat an EUSS application as one made under the Immigration (EEA) Regulations 2016.
7. The remainder of the grounds do now show any arguable errors of law in the decision as the decision in Celik v SSHD [2023] EWCA Civ 921 upheld the decision of the Upper Tribunal in Celik which found that where the appellant had no substantive right under the Immigration Rules he could not invoke the concept of proportionality in Article 18.1(r) of the Withdrawal Agreement.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st November 2023