



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-003875

First-tier Tribunal No:
EA/09767/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th November 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HARBINDER SINGH
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr M Parvar, Senior Presenting Officer

For the Respondent: Mr A Rahman, Counsel, instructed by London Imperial
Immigration Services

Heard at Field House on 2 November 2023

DECISION AND REASONS

Introduction

1. I will refer to the parties as they stood before the First-tier Tribunal: therefore the Secretary of State is once again “the Respondent”, and Mr Singh is “the Appellant”.

2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Dineen (“the judge”), promulgated on 28 July 2023, by which he allowed the Appellant’s appeal against the Respondent’s refusal of an EUSS application.
3. The Appellant is a national of India who entered into a relationship with a Polish national, Ms Hawrysy in or around the beginning of 2020. It is common ground that the couple’s relationship has been genuine and subsisting ever since. In June 2020 the Appellant initiated the process for seeking permission to get married. On 19 November 2020 Birmingham City Council confirmed that they could proceed with that application subject to approval by the Respondent. That approval was only communicated to the Appellant on 13 January 2021, after the specified date of 31 December 2020. The couple were eventually married on 24 April 2021.
4. Having made findings of fact in line with the series of events just outlined, at paragraphs 23 and 24 the judge concluded that:
 - “23. I find that the relationship between the appellant and sponsor became durable at some time before the date when they began living together in June 2020.
 24. Thus they satisfy the requirements of appendix EU, the appellant being a family member of the sponsor within the terms of the definitions applicable to the appendix”.
5. The Respondent sought permission to appeal on the basis that the judge had failed to apply the provisions of Appendix EU and that his decision was incompatible with the Court of Appeal’s judgment in Celik v SSHD [2023] EWCA Civ 921. Permission was granted and the matter came before me.

Discussion and conclusions on the error of law issue

6. Mr Parvar relied on the grounds of appeal. Mr Rahman quite properly accepted that Celik was binding on me. He emphasised what he

described as the delay in the Appellant being given permission to get married: if that delay had not occurred the couple could have married before the specified date and he could have made a relevant application under the Immigration (European Economic Area) Regulations 2016.

7. With respect to Mr Rahman's position, I do not accept that argument and I conclude that the judge did materially err in law when allowing the Appellant's appeal.
8. It is quite clear from Appendix EU and the judgment in Celik that the Appellant could not satisfy the relevant definitions in Annex 1 to the Appendix and that there was no legal basis on which the judge could have concluded otherwise and then allowed the appeal under the Immigration Rules. He did not hold a "relevant document".
9. As to the delay point, in the first instance any argument based on proportionality or fairness was simply not open to the Appellant under the Withdrawal Agreement, as confirmed by Celik. In any event, any delay that occurred was essentially down to Birmingham City Council, not the Respondent, with reference to the period between June 2020 and mid-November of that year. Once Birmingham City Council had finished their initial processes there was very little delay on the Respondent's part. The fact that confirmation was not provided until after the specified date is, with respect, simply a result of the cut-off point which had to be drawn at some stage and happened to be set at 31 December 2020, as opposed to a later date.
10. I set the judge's decision aside. It is appropriate for me to go on and re-make the decision in this appeal without a further hearing, as agreed by the representatives before me.

Re-making the decision

11. I re-state the unchallenged findings that the Appellant is in a genuine and subsisting relationship with his wife and has been since early 2020. However, it is undoubtedly the case that he could not and

cannot meet the definition of a family member for the purposes of Annex 1 to Appendix EU and that his appeal must fail under the Rules.

12. In light of Celik, the Appellant cannot rely on the Withdrawal Agreement.

13. Article 8 is not in play in this case and I do not address it.

Notice of Decision

The decision of the First-tier Tribunal involved making an error of law and that decision is set aside.

I re-make the decision, dismissing the Appellant's appeal on all grounds.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 6 November 2023