



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

Case No: UI-2022-001829

First-Tier Tribunal No:  
EA/12350/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 24<sup>th</sup> April 2024**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR HYSNI KARAJ  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None (previously Osprey Solicitors)

For the Respondent: Ms A Ahmed, Home Office Presenting Officer

**Heard at Field House on 26 March 2024**

**DECISION AND REASONS**

1. The appellant, an Albanian national, appeals against the decision of First-Tier Tribunal Judge G Andrews ('the judge') who dismissed the appellant's appeal against the Secretary of State refusal on 14<sup>th</sup> August 2021, of the application for leave, dated 19<sup>th</sup> May 2021. The refusal was made under the EU Settlement Scheme (the EUSS) on the basis that the appellant was not a family member of a relevant EEA citizen. The appellant married his wife, a Romanian citizen, on 10<sup>th</sup> April 2021 in the UK and after the 'specified date' of 31<sup>st</sup> December 2020. The application was considered on the basis that the applicant was a durable partner but he did not have a documented right of permanent residence and he had

not been issued with a family permit or residence card under the EEA Regulations as the durable partner of the EEA national.

2. The judge identified that the appellant had a right of appeal under regulation 3 of the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020. The rights of appeal are set out under Regulation 8 that the refusal decision (i) breaches certain rights which the appellant has by virtue of the EU Withdrawal Agreement, or (ii) is not in accordance with the 'residence scheme immigration rules' (under s17 of the European Union (Withdrawal Agreement) Act 2020, the 'residence scheme immigration rules' include those in Appendix EU).
3. The judge recorded that the appellant maintained that his marriage was genuine and the decision breached his rights under the EU Withdrawal Agreement.
4. The appellant had entered and worked illegally in the United Kingdom.
5. The judge found at [31] that the appellant did not satisfy the requirements for limited leave to remain as the sponsor's 'family member' unless he satisfied paragraphs (a)(i) or (ii) of the definition of 'family member of a relevant EEA citizen' under Appendix EU to the Immigration Rules. The judge found the appellant could satisfy neither. The appellant did not hold a relevant document as per paragraph (a) (ii).
6. The judge from [33] went on to consider Article 19(1)(d) of the EU Withdrawal Agreement Paragraph EU 4 and found nothing in any of the documents produced by the representative assisted the appellant. The appeal was dismissed.

#### Grounds for Permission to appeal

7. It was asserted the judge made material errors of law. There were reasonable grounds for the appellant missing the deadline owing to the closure of the register officers because of the pandemic. It was acknowledged that the appellant was not a family member under the Withdrawal Agreement but the policy states that only the EEA national needed to be lawfully resident by virtue of the EEA regulations and family members could continue to rely on those EU law rights pending the outcome of an application made by the 30th June 2021. The policy guidance (EU Settlement Scheme: EU other EEA and Swiss citizens and their family member) Version 15.0 9<sup>th</sup> December 2021 was not clear as to whether the reasonable grounds for failing to meet the deadline meant the deadline for making the application or continuing to rely on EU Law rights. There was provision for temporary concessions for durable partners and that a flexible approach should be taken. SF and Ors (Guidance post 2014 Act) Albania {2017} UKUT 00120 (IAC) was relied upon.
8. In the alternative the appellant relied on Article 10 of the Withdrawal Agreement which required facilitation of entry clearance for extended

family members whose application for an EEA family permit made by the end of the transition period was successful.

9. The decision was disproportionate under Article 18(1)(r) of the Withdrawal Agreement.

### Conclusions

10. Neither the appellant nor any representative, despite having been notified on 5<sup>th</sup> March 2024 of the date time and venue of the hearing in the Upper Tribunal, attended. Both his nominated legal representative and the appellant himself had been notified. The clerk attempted to reach the appellant's representatives by telephone but the line appeared to be disconnected. In accordance with the overriding objective and the test of fairness, I considered that the appellant had been properly notified of the hearing in ample time and had not requested any adjournment and that it was fair to proceed. Having failed to make contact it was unlikely that any adjournment was likely to produce the appellant. No objection was received from the Secretary of State.
11. The appellant married his EEA sponsor after the specified date of 31<sup>st</sup> December 2020 and was thus considered by the judge under the provisions for 'durable partner' route. The rule required either evidence that residence had been facilitated or that an application had been made prior to that date. Neither had occurred. The appellant therefore cannot fulfil the requirements under Appendix EU. He was not and is not a 'family member'. The policy cited in the challenge relates to 'family members'; the appellant had not shown he was a 'durable partner' within the relevant definition (Appendix EU) and the judge was unarguably correct to state that nothing produced assisted the appellant.
12. The Withdrawal Agreement provides no applicable rights to a person in the appellant's circumstances. Article 10 (1) (e) confirms that the beneficiaries of the Withdrawal Agreement are limited to individuals residing in accordance with EU law as of 31<sup>st</sup> December 2020 ("the specified date"). The appellant was not 'in scope' of the Withdrawal Agreement' as he had not had his residence facilitated in accordance with national legislation. There was therefore no entitlement to the full range of judicial redress including Article 18(1)(r).
13. The Upper Tribunal issued guidance on the application of the EU withdrawal agreement in Celik (EU exit, marriage, human rights) [2022], and approved by the Court of Appeal in Celik v SSHD [2023] EWCA Civ 921, as follows:

*“(1) A person (P) in a durable relationship in the United Kingdom with an EU citizen has as such no substantive rights under the EU Withdrawal Agreement, unless P's entry and residence were being facilitated before 11pm GMT on 31 December 2020 or P had applied for such facilitation before that time.*

- (2) *Where P has no such substantive right, P 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 ('the 2020 Regulations'). That includes the situation where it is likely that P would have been able to secure a date to marry the EU citizen before the time mentioned in paragraph (1) above, but for the Covid-19 pandemic.*
- (3) *Regulation 9(4) of the 2020 Regulations confers a power on the First-Tier Tribunal to consider a human rights ground of appeal, subject to the prohibition imposed by regulation 9(5) upon the Tribunal considering a new matter without the consent of the Secretary of State".*

14. The appellant made his application under the EU Settlement Scheme not under the Immigration (European Economic Area) Regulations 2016. He married after the specified date of 31<sup>st</sup> December 2020 and although found to have a durable relationship, the appellant had failed to even apply for facilitation of his 'durable partnership' prior to the specified date. The appellant simply does not fall within the personal scope of the Withdrawal Agreement. His appeal therefore cannot succeed. In a clear and concise decision, the judge properly made no material error of law.

### **Notice of Decision**

There was no material error of law in the First-Tier Tribunal decision. The First-Tier Tribunal decision will stand and the appeal remains dismissed.

**Helen Rimington**

Judge of the Upper Tribunal Rimington  
Immigration and Asylum Chamber

26th March 2024

