



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002432
First-tier Tribunal No: EA/06452/2021

THE IMMIGRATION ACTS

Decision Issued:

15th February 2024

Before:

UPPER TRIBUNAL JUDGE GILL

Between

The Secretary of State for the Home Department

Appellant

And

Mr Eduart Coka
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Presenting Officer.
For the Respondent: (no appearance)

Heard at Field House on 6 February 2024

DECISION

1. This case has been listed for disposal today.
2. This is an appeal by the Secretary of State against a decision of Judge of the First-tier Tribunal I. Howard who, in a decision promulgated on 24 January 2022 following a hearing on 13 October 2021, allowed the appeal of Mr Eduart Coka, a national of Albania born on 1 June 1996 (hereafter the "claimant"), against the Secretary of State's decision of 7 January 2021 which refused the claimant's application of 19 August 2020 for pre-settled status and a residence card under the EUSS pursuant to Appendix EU (Family permit) of the Immigration Rules.
3. This case was stayed pending the judgment of the Court of Appeal in Celik v SSHD [2023] EWCA Civ 9321. Subsequent to the Court of Appeal's judgment being delivered on 31 July 2023, directions were served on the parties on 4 December 2023 which, inter alia, required the claimant to consider his position in light of the Court of Appeal's judgment. The claimant was informed that, if no response was received from him to the directions and no consent order was filed, the appeal would be listed for disposal.

4. No response was received by or on behalf of the claimant to the directions. This appeal was therefore listed for disposal by a Notice of Hearing dated 19 January 2024.
5. By an email of the same date, Waterstone Solicitors, who were on record as the claimant's solicitors, informed the Upper Tribunal that the claimant has been issued with leave to remain under the Immigration Rules and that *"they are no longer pursuing the appeal. Considering that we are not the appellant's [sic] on [sic] this case the appellant has our consent to withdraw the appeal should they wish as we are no longer representing this case"*.
6. In response to a subsequent email by the UT to clarify whether they were still instructed by the claimant, Waterstone Solicitors confirmed by an email dated 22 January 2024 that they had full authority to act for the claimant; that he had returned voluntarily to Albania and *"in doing so withdrew all claims"*; that he had made an application for leave to remain as the spouse of an EEA national with status in the UK; and that the same was granted.
7. By an email dated 24 January 2024, Ms A Nolan confirmed on the Secretary of State's behalf that the claimant had been granted entry clearance. A draft consent order had been previously sent by the Secretary of State to the claimant. As Ms Nolan correctly stated in her appeal, the appeal could not be treated as abandoned because he had not been granted leave by virtue of the residence scheme immigration rules as is made clear at regulation 13(3) of the Immigration (Citizens; Rights Appeals) (EU Exit) Regulations 2020.
8. As at today's hearing, the claimant has not indicated his agreement to the consent order.
9. A document entitled *"Note 2 and Directions"* signed by me was sent to the parties on 29 January 2024. Paras 9-12 of the *"Note 2 and Directions"* stated as follows:
 9. This *"Note 2 and Directions"* puts the parties on notice that, in view of the fact that the email dated 22 January 2024 from Waterstone Legal states that in returning to Albania *"[Mr Coka] withdrew all claims"* and bearing in mind the judgment of the Court of Appeal in *Celik v SSHD [2023] EWCA Civ 921* as well as the Secretary of State's grounds of appeal to the Upper Tribunal, I am minded to conclude that Judge of the First-tier Tribunal Howard materially erred in law in allowing Mr Coka's appeal and therefore I am minded to set aside his decision and re-make the decision on Mr Coka's appeal against the Secretary of State's decision to refuse pre-settled status and a residence card by dismissing his appeal against that decision.
 10. This will be the outcome of the hearing on 6 February 2024 unless the Upper Tribunal receives, no later than 4 p.m. on Friday 2 February 2024:
 - (i) a consent order signed by both parties; or
 - (ii) written submissions from Mr Coka objecting to my preliminary view at para 9 above, together with detailed reasons explaining why *Celik v SSHD* should be differentiated in his case. Any such submissions, if received, will be considered at the hearing on 6 February 2024 which will then become a substantive hearing without further notice.
 11. In the circumstances, this appeal will remain listed to be heard on 6 February 2024. It is open to Mr Coka to attend that hearing or be represented at that hearing.
 12. If a consent order signed by both parties is received by 4 pm on 2 February 2024, the hearing on 6 February 2024 will be vacated."

10. Directions given in the “*Note 2 and Directions*” provided for the claimant to file and serve written submissions if he objected to my preliminary view.
11. There has been no response from the claimant to the “*Note 2 and Directions*” nor has he signed the respondent’s proposed consent order.
12. I am satisfied that the Notice of the disposal hearing dated 19 January 2024 was sent to the appellant by post to his address as last notified to the Upper Tribunal. I am therefore satisfied that the Notice of Hearing has been duly served.
13. On the hearing day, no one attended on the claimant’s behalf at 10.00 a.m. nor by 2.20 p.m.
14. Having considered the overriding objective and given that there has been no response from the claimant to date to directions issued on more than one occasion, as explained above, I decided to exercise my discretion and proceed with the hearing in the absence of the claimant or any representation in his behalf.
15. In view of all of the foregoing, I dispose of this appeal by allowing the Secretary of State’s appeal outright. The decision of Judge Howard to allow the claimant’s appeal is therefore set aside. I re-make the decision on the claimant’s appeal by dismissing his appeal against the Secretary of State’s decision.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error of law sufficient to require it to be set aside.

I re-make the decision on the claimant’s appeal by dismissing his appeal against the Secretary of State’s decision.

Signed
Upper Tribunal Judge Gill

Date: 13 February 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email