



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

Case No: UI-2022-002611

First-tier Tribunal No: EA/11978/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 03<sup>rd</sup> of July 2024**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**Amarildo Hisku**  
**(No anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**On the papers**

**DECISION AND REASONS**

1. In a decision promulgated on 30 March 2023 the Upper Tribunal found an error of law in the determination of the First-tier Tribunal Judge who allowed the Appellant's appeal against the refusal of his application made on 4 May 2021 for an EUSS residence card. The Appellant had not been issued with a family permit or residence card under the Immigration (EEA) Regulations 2016 as a durable partner of an EEA national and therefore did not hold the 'relevant document' required to enable him to succeed under Appendix EU.
2. Following the grant of permission to appeal to the Court of Appeal of the decision of the Upper Tribunal in *Celik v Secretary of State for the Home Department* (EU exit; marriage; human rights) [2022] UKUT 00220 the proceedings were stayed. That decision was upheld by the Court of Appeal in their judgement handed down with citation [2023] EWCA Civ 921.
3. The parties were therefore directed to consider their position. A letter from the Appellant's legal representatives dated 17 August 2023 accepted the applicant in *Celik* ran a case raising similar issues but stated they had been instructed to seek a further stay in light of an application being made for public funding by the parties in *Celik* before the Court of Appeal to appeal to the Supreme Court.
4. It is accepted such application was made but it was refused by the Supreme Court.
5. In a direction dated 7 February 2024 the parties were advised that having reviewed the matter I had formed a preliminary view that the Upper Tribunal was able to dispose of the merits of the appeal without a further hearing on the papers on the basis the Court of Appeal have clearly established there is no

arguable merit in the challenge to the refusal of his application on the pleaded grounds. The parties were given 14 days from the date of the sending the directions to file a response with a clear indication that the matter will be referred back to me to enable the matter to be determined as set out in that direction, or further directions given if required.

6. The direction was served on 13 February 2024. I have been advised by the Upper Tribunal staff that there has been no response at all from the parties.
7. In light of the clear indication of the Upper Tribunal's position, in light of the now settled legal position, in light of the clear notice of that view, the parties having been given ample opportunity to respond to state their own position but having made no such observation, I am satisfied it is appropriate in the interests of justice and fairness to proceed to determine the merits of the appeal on the papers.
8. For the reasons set out in the direction notice provided to the parties and in light of the settled legal position, as the Appellant did not have a 'relevant document' and as his right to enter and remain in the UK has never been facilitated by the Secretary of State, I find the only outcome for this appeal is to substitute a decision to dismiss the appeal.

### **Notice of Decision**

9. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**1 July 2024**