



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

Case No: UI-2022-002812

First-tier Tribunal No: EA/15352/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 20<sup>th</sup> of June 2024**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**  
**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Alfret Laci**  
**(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Banham, Senior Home Office Presenting Officer  
For the Respondent: No attendance

**Heard at Field House on 20 May 2024**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State. However, for convenience, we will refer to the parties as they were designated in the First-tier Tribunal.
2. The appellant, who is not represented, did not attend the hearing. Having reviewed the Tribunal file, we are satisfied that he was notified of the hearing and that it is in the interests of justice to proceed.

Background

3. The appellant is a citizen of Albania. He entered the UK unlawfully in 2018. In November 2020 he began a relationship with the woman he subsequently married in February 2022 (“the sponsor”). The sponsor is an EEA national and she was granted limited leave to remain under the EU Settlement Scheme in December 2020.
4. The appellant applied for leave under the EU Settlement Scheme on the basis of his relationship with the sponsor. On 2 November 2021 the application was refused. The respondent did not accept that on 31 December 2020 (the end of the transition period) the appellant was either married to or a durable partner of the sponsor. With respect to the appellant being a durable partner, the respondent stated, inter alia, that the appellant did not meet the requirement under Appendix EU to have a residence card or a family permit.

#### First tier Tribunal decision

5. The appellant appealed to the First-tier Tribunal, where his appeal came before Judge of the First-tier Tribunal Easterman (“the judge”). The judge found that the appellant and sponsor were in a durable relationship and allowed the appeal on this basis.
6. The judge did not consider whether the appellant needed to have a residence card or family permit. It appears from the decision (paragraphs 6 and 47) that the respondent’s representative in the First-tier Tribunal conceded that it was sufficient to show that the relationship was durable.

#### Grounds of Appeal

7. The grounds of appeal raise several arguments. The most significant argument is that the judge misapplied the law, as it is a requirement under Appendix EU and the EU Withdrawal Agreement for a durable partner with no other lawful basis to be in the UK at the end of the transition period to have a “relevant document”, such as a residence card or family permit.

#### Relevant Law

8. As the appellant did not otherwise have a lawful basis to stay in the UK, in order to fall within the scope of Appendix EU as a durable partner, he needed to have a “relevant document” on 31 December 2020. See *Hani (EUSS durable partners: para. (aaa))* [2024] UKUT 00068(IAC). In addition, the appellant could only fall within the scope of the EU Withdrawal Agreement if he had, or had applied for, such a document before 31 December 2020. See *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921.

#### Error of Law

9. There is a clear error of law, which is that the judge failed to consider the significance of the appellant not having, and not having applied for, a relevant document before 31 December 2020.
10. We raised with Mr Banham that it appears from the decision that the respondent conceded at the hearing that there was no necessity to have, or to have applied for, a relevant document. We asked him to make submissions on the significance of a wrongly made concession on a point of law and suggested that he provide the Tribunal with written submissions. We are grateful for his succinct and clear written submissions. Mr Banham’s primary argument is that there was not in fact a concession. In the light of the language used by the judge, we do not agree. His alternative argument is that it would be fair and in the

interest of justice for the respondent to be permitted to withdraw the concession as it was plainly wrong and not in accordance with the Immigration Rules that were prevailing at the time.

11. We agree with Mr Banham's alternative argument. Indeed, as the respondent's concession was made on the basis of an erroneous interpretation of the law we would not have permitted it to stand even if the respondent had not sought to withdraw it. This is because we cannot decide a case on the basis of an erroneous understanding of the law. As explained by Lord Diplock in *Bahamas International Trust Co Ltd v Threadgold* [1974] 1 WLR 1514 at [1525]:

It is for the judge to decide for himself what the law is, not to accept it from any or even all of the parties to the suit; having so decided it is his duty to apply it to the facts of the case. He would be acting contrary to his judicial oath if he were to determine the case by applying what the parties conceived to be the law, if in his own opinion it was erroneous.

12. Accordingly, we set aside the decision of the First-tier Tribunal.

#### Remade Decision

13. In order to be entitled to leave under the EU Settlement Scheme, or to fall within the scope of the EU Withdrawal Agreement, the appellant needed to have, or to have applied for, a relevant document before the end of the transition period. As he did not have, and had not applied for, such a document by that date (or at all), his application could not succeed and therefore there is no basis to allow his appeal. We therefore remake the decision by dismissing the appeal.

#### **Notice of Decision**

14. The decision of the First-tier Tribunal is set aside. We remake the decision by dismissing the appeal.

D. Sheridan

**Upper Tribunal Judge Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**11.6.2024**