



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002826
First-tier Tribunal No:
EA/12364/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

XHINO SELMANI
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mrs A Nolan, Senior Home Office Presenting Officer

For the Respondent: No attendance

Heard at Field House on 27 March 2024

DECISION AND REASONS

(extemporary judgement)

1. It was convenient to hear the appeal at approximately noon. The respondent to this appeal, hereinafter “the claimant” has not attended and had offered no explanation. The papers showed that notice of hearing had been sent by post and we are satisfied that he had proper notice of the hearing.
2. Mrs Nolan, who appears for the Secretary of State, that is the appellant in this appeal, explained that the claimant has been given leave to be in the United Kingdom by a different route and it is therefore not at all surprising that he did not attend today. She was careful to explain that the leave given to him is not a kind which of itself causes this appeal to be abandoned.
3. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the claimant against a decision of the Secretary of State on 3 August 2021 refusing his application under the EU Settlement

Scheme. The First-tier Tribunal Judge allowed the appeal without the benefit of the decision of this Tribunal and then subsequently the Court of Appeal in **Celik v SSHD [2023] EWCA Civ 921** which shows with the benefit of hindsight, that the approach taken by the First-tier Tribunal, understandably, was totally wrong.

4. Directions were sent to the claimant giving him an opportunity to respond because it was thought this was a case that had been determined by **Celik** and he did not respond to those directions.
5. It is quite clear to us that this is an appeal that should not have been allowed. The judge misunderstood the law and, although, as we say, there is every reason to be sympathetic, the only proper decision is to set aside the decision of the First-tier Tribunal and substitute a decision dismissing the appeal against the Secretary of State's decision which is what we do. That is the decision of both of us.

Notice of Decision

6. The First-tier Tribunal erred in law. We set aside its decision and substitute a decision dismissing the claimant's appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 June 2024