



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002832
First-tier Tribunal No:
EA/14510/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 May 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NDRICIM KOCI
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer
For the Respondent: No appearance

Heard at Field House on 29 April 2024

DECISION AND REASONS
(extempore)

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State refusing him admission under the EU Settlement Scheme. The claimant did not appear before us. For reasons that will become apparent this was unsurprising.
2. This is a case where there has been correspondence with the claimant’s solicitors and, we were told by Mr Terrell, with the Secretary of State in which it has been made clear that the claimant realises that the law is against him and does not wish to continue with the appeal. The Tribunal had a communication indicating that the claimant wished to withdraw the appeal but that would be inappropriate because it is not his appeal to withdraw. This was explained, and Mr Terrell says there was discussion about a consent order that has not resulted in any actual order being agreed.

3. It is quite plain from all of these factors that the claimant is well aware of the hearing before us and has decided not to come. It is also fairly clear from what we have already said that this is a case where the decision in **Celik EWCA Civ 921** is wholly against the claimant and means that the First-tier Tribunal, albeit understandably because the judge was acting without the benefit of determined authority, was decided wrongly in the First-tier Tribunal.
4. The only proper outcome is to set aside that decision and substitute a decision dismissing the claimant's appeal against the Secretary of State's decision, which is what we do.
5. Since giving this judgment in the hearing room we have received a signed draft consent order agreeing to the outcome that we determined. We do not know when it was signed and so this decision, rather than the consent order, stands. Clearly the claimant was trying to act responsibly but there was an administrative glitch that delayed the draft consent order coming to our attention.

Notice of Decision

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

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated 1 May 2024