



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

Case No: UI-2022-002944

First-tier Tribunal No:  
EA/14216/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 25 June 2024**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR MUHAMMAD JAVED SADDIQUE  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mr K Ojo, Home Office Presenting Officer.

**Heard at Field House on 22 March 2024**

**DECISION AND REASONS**

1. The appellant appealed, with permission, against the decision of First-tier Tribunal Judge Anthony (“the judge”) who dismissed the appellant’s appeal under the Immigration Citizens’ Rights Appeals (EU Exit) Regulations 2020) (“the Exit Regulations 2020”).
2. The appellant, a citizen of Pakistan born on 4<sup>th</sup> April 1975, made an application under the EU Settlement Scheme (EUSS) on 13<sup>th</sup> January 2020 and then appealed against the decision of the Secretary of State dated 21<sup>st</sup> September 2021 refusing him pre-settled status under the EUSS as the family member (durable partner) of an EEA citizen under Appendix

EU. The refusal stated that the appellant did not fulfil the relevant requirements. The refusal decision acknowledged that the appellant was not in a durable relationship and he had no relevant documentation.

3. UT Judge Norton-Taylor adjourned an error of law hearing on 27<sup>th</sup> March 2023 because the appellant wished to seek representation. Further directions were set on 3<sup>rd</sup> April 2024 by Judge Norton-Taylor who gave his provisional view that the appeal could not succeed because first, the appellant's application for EUSS would have to be made after the specified date (31<sup>st</sup> December 2020) and the application was made before the specified date on 13<sup>th</sup> January 2020 (contrary to para (b)(ii) (aa) of Annex 1) and secondly, and moreover, the appellant could not satisfy the definition of 'durable partner' under (b)(ii)(bb)(aaa) of Annex 1, particularly in the light of *Hani v SSHD* (EUSS durable partners: para (aaa)[2024] UKUT 68 (IAC). The directions stated

'The relevant part of that decision [*Hani*] states that someone such as the appellant could not succeed unless they had a lawful basis of stay in the United Kingdom at the specified date of 31 December 2020. In this case, the appellant's lawful basis of stay had ended in 2015. So, although the First-tier Tribunal Judge seems to have gone wrong in his analysis, his ultimate decision that the appeal should be dismissed was correct.'

4. At the date of application, the appellant was no longer in a relationship with the EEA national as recorded at [8] and [20] of the decision of the First-tier Tribunal judge. Albeit a previous decision may have found the appellant had a relationship with an EEA national previously, it was noted at [13] that the appellant had never made any application under the Immigration (European Economic Area) Regulations 2006 or 2016. A previous appeal which was granted in 2013 was allowed on the basis of human rights only [10] and [15] and further leave was refused in April 2016, [13].
5. The Upper Tribunal issued guidance on the application of the EU withdrawal agreement in *Celik* (EU exit, marriage, human rights) [2022], approved by the Court of Appeal in *Celik v SSHD* [2023] EWCA Civ 921, as follows:

*“(1) A person (P) in a durable relationship in the United Kingdom with an EU citizen has as such no substantive rights under the EU Withdrawal Agreement, unless P's entry and residence were being facilitated before 11pm GMT on 31 December 2020 or P had applied for such facilitation before that time.*

6. The appellant made his application under the EU Settlement Scheme not under the Immigration (European Economic Area) Regulations 2016 but he was no longer in a relationship. The appellant could not fulfil the requirements of EU11 or 14 of Appendix EU. As stated in *Hani*

*(1) The effect of paragraph (b)(ii)(bb)(aaa) of the definition of "durable partner" in Annex 1 of Appendix EU to the Immigration*

*Rules, as inserted by Statement of Changes HC 813 (from 31 December 2020 to 11 April 2023), is that a person who was in a durable partnership but did not have a "relevant document", and who did not otherwise have a lawful basis of stay in the United Kingdom at the "specified date" of 31 December 2020 at 11.00PM, is incapable of meeting the definition of "durable partner"*

7. As explained, the appellant was not even in a durable relationship at the date of application, had thus made no application for facilitation under the EEA regulations and had no relevant documentation and had no lawful basis to stay when he made the application. The appellant could not fulfil the relevant immigration rules under Appendix EU and simply does not fall within the personal scope of the Withdrawal Agreement. His appeal therefore could not succeed.
8. The decision of FtT Judge Anthony discloses no material error of law and will stand.

### **Notice of Decision**

The appellant's appeal against the Secretary of State's decision remains dismissed.

**Helen Rimington**

Judge of the Upper Tribunal Rimington  
Immigration and Asylum Chamber

11<sup>th</sup> June 2024