



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

Case No: UI-2022-003061

First-tier Tribunal No: EA/11998/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 6<sup>th</sup> of June 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ARTUR HOXHA**

Respondent

**(NO ANONYMITY ORDER MADE)**

**Representation:**

For the Appellant: Ms J. Isherwood, Senior Home Office Presenting Officer

For the Respondent: No appearance

**Heard at Field House on 13 May 2024**

**DECISION AND REASONS**

1. For the sake of continuity, I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant (Mr Hoxha) appealed the respondent's (SSHD) decision dated 4 August 2021 to refuse leave to remain under the EU Settlement Scheme immigration rules as the family member (spouse) of a relevant EEA citizen.
3. The decision attracted a right of appeal under The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ('the CRA Regulations 2020'). The available grounds of appeal were that the decision was not in accordance with the residence scheme immigration rules or breached rights under the Withdrawal Agreement.
4. First-tier Tribunal Judge Hawden-Beal ('the judge'), who heard the appeal in Birmingham on 24 March 2022, allowed the appeal in a decision promulgated on 30 March 2022. The judge accepted that the appellant could not meet the

requirements of the residence scheme immigration rules set out in EU11 and EU14 but found that the decision was in breach of the Withdrawal Agreement because his EEA partner could not supply other evidence of their durable relationship, unlike a British citizen or a sponsor from Northern Ireland, and the judge held that this was discriminatory, and so breached his partner's rights as an EEA national under Article 12.

5. The SSHD applied for permission to appeal to the Upper Tribunal on the ground that the appellant was not within the personal scope of the Withdrawal Agreement because he had not had his residence facilitated in the UK under the EEA Regulations 2016 before the UK exited from the EU, and so he had no entitlement to the full range of judicial redress including the Article 18(1)(r) requirement that the decision should be proportionate.
6. The appellant has not filed a Rule 24 Response opposing the appeal, and there was no appearance by the appellant or a representative at the hearing.

### **Decision and reasons**

7. Following the Court of Appeal's decision in *Celik* [2023] EWCA Civ 921, the SSHD's grounds of appeal disclose an error of law in the First-tier Tribunal decision. The appellant did not marry his partner until 19 April 2021. The First-tier Tribunal found that the appellant was in a genuine relationship with his EEA partner prior to 31 December 2020, but there is no evidence to show that, as an extended family member, he had been facilitated entry by way of the issuing of a residence card before the UK exited from the EU or that he had applied for a residence card before the specified date.
8. Article 12 of the Withdrawal Agreement prohibits discrimination on the ground of nationality in respect of persons referred to in Article 10. As the judge rightly held, the appellant is not a person referred to in Article 10. Accordingly, the judge was wrong to find that the decision breached the Withdrawal Agreement because it discriminated against his EEA partner. In so finding, the judge was in effect rewriting Article 10 to extend the personal scope of the Withdrawal Agreement to persons such as the appellant, which is clearly wrong.
9. The appellant did not meet the requirement of the residence scheme immigration rules to have a 'relevant document' and he did not come within the personal scope of the Withdrawal Agreement.
10. So, the decision is remade and the appellant's appeal must be dismissed.

### **Notice of Decision**

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is remade and the appeal is DISMISSED under the CRA Regulations 2020

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
25 May 2024