



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

Case No: UI-2022-003228

First-tier Tribunal No:  
EA/11478/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 16 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**  
**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**KRISTEL LLESHI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the appellant: Ms S Mackenzie, Senior Presenting Officer

For the respondent: Unrepresented and no appearance

**Heard at Field House on 5 August 2024**

## **EXTEMPORE DECISION AND REASONS**

### **Introduction**

1. For the sake of continuity, we shall refer to the parties as they were before the First-tier Tribunal and therefore the Secretary of State is once again “the respondent” and Mr Lleshi is “the appellant”.
2. The respondent appeals with permission against the decision of First-tier Tribunal Judge Murshed (“the judge”), promulgated on 24 March 2022 following a hearing on 28 January that year. By that decision, the judge allowed the appellant’s appeal against the respondent’s refusal of an application made under Appendix EU to the Immigration Rules. The application had been made on 22 April 2021 and the refusal decision was dated 22 July 2021.
3. The appellant, a citizen of Albania born in 1997, claimed to be a family member of an EEA citizen, Ms Angelica Matache, a national of Romania, and had been in a durable relationship with her as at the specified date of 31 December 2020, subsequently marrying on 7 July 2021. In summary, the respondent concluded that the appellant could not bring himself within the definition of a family member or a durable partner for the purposes of Appendix EU. The judge was not assisted by the absence of a Presenting Officer at the hearing, as is rather too common in our experience.
4. The judge accepted that the Appellant was in a durable relationship with Ms Matache as at the specified date. However, the judge concluded that the definition of durable partner under Annex 1 in Appendix EU could not be met because the appellant did not hold a relevant document.
5. The judge went on to consider the Withdrawal Agreement, concluding that it did apply in the appellant’s case and that in all the circumstances the respondent’s decision was disproportionate and therefore in breach of the Withdrawal Agreement. The appeal was accordingly allowed with specific reference to that Agreement.

6. The respondent applied for permission on the basis of what are now fairly familiar grounds of appeal in this type of case. In essence, it was asserted that the provisions of the Withdrawal Agreement did not apply in the appellant's case and that the judge had erred in arriving at the contrary conclusion.
7. Permission to appeal was granted by the First-tier Tribunal on 17 May 2022. Following this, the case was stayed by the Upper Tribunal pending the outcome of the leading case of Celik v SSHD in the Court of Appeal. Judgment was handed down by the court on 31 July 2023: [2023] EWCA Civ 921. Following this the Upper Tribunal issued directions to the parties requiring them to respond to the impact of Celik v SSHD on the appellant's case. Nothing more was heard from the appellant.
8. Eventually the case was listed for an error of law hearing and thus the matter came before us. Neither the appellant nor his representatives appeared. Having made enquiries, it transpired that the appellant's representatives had apparently ceased to act for him on the basis of a lack of instructions and/or funds. As far as we can see this had not been properly communicated to the Upper Tribunal and that is unsatisfactory (in this regard, we have issued a direction at the end of our error of law decision). Having interrogated the Upper Tribunal's database, we are satisfied that a notice of the hearing had been sent to the last known residential address of the appellant (there was no email address on record). We are satisfied that the appellant was on notice of the hearing and could have attended, notwithstanding the lack of legal representation. In all the circumstances we concluded that it was fair and in the interest of justice to proceed in the appellant's absence pursuant to rule 38 of the Upper Tribunal's procedure rules.
9. We heard brief submissions from Ms Mackenzie, who essentially relied on the grounds. She submitted that the judge had erred by applying the provisions of the Withdrawal Agreement. She also urged us to go on and re-make the decision in this case and to dismiss the appellant's appeal.

10. It is clear to us that the judge did materially err in law by applying the provisions of the Withdrawal Agreement to the appellant's case. In light of Celik v SSHD it is plain that the appellant and individuals in his circumstances could not rely on the relevant provisions of the Agreement and in particular Articles 10 and 18. It was not open to the judge to apply the proportionality provision under Article 18 to the appellant. It follows that it was not open to the judge to allow the appellant's appeal on that basis. It also follows that the judge's decision must be set aside.
11. We considered whether it was appropriate to go on and re-make the decision in this case without either remitting it to the First-tier Tribunal or listing a resumed hearing in the Upper Tribunal. We concluded that it was both fair and consistent with the overriding objective to go on and re-make the decision on the materials now before us. The appellant has failed to engage with his appeal, there is no indication of any further relevant evidence to be provided, and the legal issues are narrow and well-established.
12. The appellant is not entitled to rely on Article 8 ECHR for reasons set out by the judge and now also in the reported decision of Dani (non-removal human rights submissions) Albania [2024] UKUT 00293.
13. The appellant cannot succeed by reference to Appendix EU for the reasons set out by the judge previously, which in summary stated that the absence of a relevant document was fatal to that aspect of the case.
14. Further, for the reasons we have already given, the judgment in Celik v SSHD precludes the appellant from being able to rely on the provisions of the Withdrawal Agreement.
15. It follows that whilst the appellant had been in a durable relationship with Ms Matache and he may now still be married to her, his appeal under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020 against the respondent's refusal of the EUSS application must be dismissed.

### **Anonymity**

16. There is no basis for making an anonymity direction in this case.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**We exercise our discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**

**We re-make the decision by dismissing the appeal under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020.**

### **Direction**

**(1) No later than 3 days after this error of law decision is sent out, Graceland Solicitors are to confirm in writing that they have ceased to act for Mr Lleshi and when this occurred. The confirmation must be marked for the urgent attention of Upper Tribunal Judge Norton-Taylor.**

**H Norton-Taylor**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 6 August 2024**