



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003291

First-Tier Tribunal No: EA/16579/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25th April 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NARINDER SINGH
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr T. Lindsay, Senior Home Office Presenting Officer

For the Respondent: Mr S. Shah of 786 Law Associates

Heard at Field House on 10 April 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 Singh) appealed the respondent's (SSHD) decision dated 07 December 2021 to refuse leave to remain under the EU Settlement Scheme immigration rules as the family member of a relevant EEA citizen (durable partner).
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 Morgan ('the judge') allowed the appeal in a decision sent on 18 May 2022. He heard evidence from the appellant and his EEA citizen partner. He was satisfied that the couple were in a genuine, subsisting, and durable relationship. They had been living together since 2019 and were engaged in 2020. They were married on 21 May 2021 (after the UK exited from the EU). The judge made no clear findings in relation to the immigration rules but noted that the respondent had refused the application on the ground that the appellant had not been issued with a residence card as a durable partner before the UK exited from the EU on 31 December 2020. The judge went on to make the following findings in relation to rights under the Withdrawal Agreement:

'10. On the particular facts of this appeal I find that the respondent's decision is disproportionate. I find that the couple were in a durable relationship prior to the end of the transition period. The couple are now married. I find that the couple are in a genuine and durable relationship and note that had they applied prior to the end of the transition period, on the basis of their durable relationship, I would have allowed the appeal under the EEA regulations. This route is no longer open to them however it would be disproportionate in my judgment to deny the appellant leave under the withdrawal agreement because the couple waited until they were married before applying under the Scheme.'

5. The Secretary of State applied for permission to appeal to the Upper Tribunal on the ground that the appellant did not meet the requirements of the residence scheme immigration rules and was not within the personal scope of the Withdrawal Agreement because he was not residing in the UK in accordance with EU law before the UK exited from the EU. The First-tier Tribunal granted permission to appeal in an order dated 14 June 2022.
6. In an order sent on 21 November 2022, Upper Tribunal Judge Jackson noted the Upper Tribunal's decisions in *Batool* and *Celik*. In light of those decisions, she formed the preliminary view that the First-Tier Tribunal decision was likely to involve the making of an error of law and proposed to make a decision without a hearing under rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008. She directed the parties to respond to the directions if they objected to the proposed course of action.
7. The Upper Tribunal noted that there was no record of a response to the directions made Upper Tribunal Judge Jackson. However, by that stage all cases involving *Celik* issues (extended family members who had not been facilitated entry prior to EU exit) had been stayed to await the outcome of the Court of Appeal's consideration in that case.
8. The Upper Tribunal has a record of an order dated 28 April 2023, which was made by a Legal Officer in the First-Tier Tribunal. The order includes a reference number that is usually assigned to appeals against decisions to refuse human rights claims (HU/52997/2023). The First-Tier Tribunal records indicate that the appellant made a separate human rights claim on 09 January 2023, which was refused by the respondent in a decision dated 27 February 2023. An appeal was lodged to the First-Tier Tribunal but was treated as abandoned with reference to section 104(4) of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') after the tribunal was informed that the appellant had been granted indefinite

leave to remain in the UK under Appendix EU of the immigration rules on 27 April 2023.

9. In an order sent on 16 of November 2023, Upper Tribunal Judge Norton Taylor made further directions relating to the conduct of this appeal following the Court of Appeal's decision in *Celik*. He expressed the provisional view that, in light of that decision, the Secretary of State's grounds of appeal were bound to succeed. The decision could be remade and the appeal would inevitably be dismissed. The parties were invited to agree a consent order. In the absence of a response to the directions the appeal would be listed for disposal. The Upper Tribunal has no record of a response to those directions.
10. No explanation was provided as to why the appellant's representatives did not reply to the directions. Mr Lindsay said that the respondent had also contacted them to offer to agree a consent order, without response. It is unclear why 786 Law Associates did not settle the appeal by consent thereby avoiding the need for a hearing given that Mr Shah agreed that the decision in *Celik* had the effect proposed by UTJ Norton-Taylor in his order.

Decision and reasons

11. The First-Tier Tribunal records show that 786 Law Associates wrote to the First-Tier Tribunal with a copy of the decision dated 27 April 2023 granting indefinite leave to remain under the EU Settlement Scheme. I note that the separate human rights appeal was treated as abandoned by the First-Tier Tribunal after the appellant was granted leave to remain.
12. I have also considered the fact that regulation 13(3) of the CRA Regulations 2020 makes provision for an appeal brought under those regulations to be treated as abandoned if a decision is made to grant leave to remain under the residence scheme rules. This was not highlighted by the legal representatives at the hearing. I have considered whether it is appropriate to treat the appeal as abandoned instead of the agreed course of action. In doing so I note that the appellant was granted ILR after the First-Tier Tribunal had already determined the appeal. I have also considered the fact that the appeal before the Upper Tribunal has been brought by the Secretary of State and not the appellant. In the absence of argument on the issue, I have decided to determine the appeal as agreed at the hearing. The exact nature of the disposal is unlikely to make any material difference given that, either way, the appeal is brought to an end.
13. In light of the Court of Appeal's decision in *Celik* the respondent's grounds of appeal disclose an error of law in the First-Tier Tribunal decision. 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. The appellant and his partner married after EU exit. For these reasons, the appellant did not meet the requirement of the residence scheme immigration rules to have a 'relevant document' and did not come within the personal scope of the Withdrawal Agreement. The decision is remade and the appeal must be dismissed. However, the decision is academic because the appellant was granted ILR under the residence scheme rules on 27 April 2023.

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

M.Canavan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 April 2024