



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003402

First-tier Tribunal No: EA/16502/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30th May 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALBERT BRAKAJ
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr T. Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr R. Alam, No.12 Chambers

Heard at Field House on 20 May 2024

DECISION AND REASONS

1. For the sake of continuity, we 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 Brakaj) appealed the respondent's (SSHD) decision dated 30 November 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 Beg ('the judge') allowed the appeal in a decision sent on 12 May 2022. The judge accepted that the appellant could not meet the

requirements of the residence scheme immigration rules EU11 but was a family member as a 'durable partner' for the purpose of EU14.

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 facilitated residence in the UK in accordance with EU law before the UK exited from the EU.
6. In an order dated 03 November 2023, Upper Tribunal Judge Sheridan made further directions relating to the conduct of this appeal following the Court of Appeal's decision in *Celik v SSHD* [2023] EWCA Civ 921. He expressed the provisional view that the Secretary of State's grounds of appeal were bound to succeed. The only possible outcome would be that the decision would be remade and the appeal dismissed. The parties were invited to consider their positions, and if appropriate, 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.
7. Mr Alam was instructed to attend the hearing. He had no instructions as to why a consent order was not agreed earlier. He was instructed to concede the error of law and the subsequent remaking in light of the decision in *Celik*.

Decision and reasons

8. Following 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 appellant did not marry his partner until 28 September 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. 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.

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
20 May 2024