



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003553
First-tier Tribunal No:
EA/11441/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BESAET MUSAJ
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

On the papers on 15 July 2024

DECISION AND REASONS

1. By a decision dated 7 June 2022 a judge of the First-tier Tribunal dismissed the Appellant's appeal against the refusal of his application for pre-settled status under Appendix EU of the Immigration Rules and under the Withdrawal Agreement.
2. The Appellant sought permission to appeal which was granted by Upper Tribunal Judge Lane on 20 October 2022.
3. The appeal was stayed pending the outcome of the appeal to the Court of Appeal against the decision of the Upper Tribunal in *Celik* [2020] UKUT 00220. That decision was upheld.
4. In a direction dated 21 March 2024 the Upper Tribunal wrote:
 7. Since the decision under appeal was promulgated there have been a number of cases handed down providing clarity on the correct interpretation of the Withdrawal Agreement. These include *Batool and Others v Secretary of State for the Home Department* [2022] UKUT 00219, *Celik v Secretary of State for the Home Department* [2022] UKUT 00220, and more recently *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921 which upheld the decision of the Upper Tribunal. Permission to appeal the Court of Appeal decision to the Supreme Court has been refused by that Court.
 8. The Judge's findings mean the appellant has no substantive rights under the Withdrawal Agreement as his entry and residence had not been facilitated before 11 PM 31 December 2020 and nor had he applied for such facilitation before that time.

9. Head note 2 of Celik [2022] UKUT 00220 reads:

(2) Where P has no such substantive right, P cannot invoke the concept of proportionality in Article 18.1(r) of the Withdrawal Agreement or the principle of fairness, in order to succeed in an appeal under the Immigration (Citizens' Rights) (EU Exit) Regulations 2020 ("the 2020 Regulations"). That includes the situation where it is likely that P would have been able to secure a date to marry the EU citizen before the time mentioned in paragraph (1) above, but for the Covid-19 pandemic.

10. That guidance has not been disturbed by the Court of Appeal.

11. In light of the above the following directions shall apply to the future conduct of this appeal:

- a. The appellant shall, no later than 4 PM 14 days from the date of the sending of these directions state whether, in light of the case law referred to above, he intends to pursue his appeal or seeks permission to withdraw the appeal on the basis he has little arguable prospects of success.
 - b. If the appellant wishes to continue with his appeal he must, within the same period, provide a detailed skeleton argument setting out in full the reasons why he believes he is able to succeed in light of the findings made by the Judge, with specific reference to the authorities referred to above.
 - c. The matter shall be placed before Upper Tribunal Judge Hanson on the first open date 21 days from the date of the sending of the directions for further consideration on the papers. A lack of response from either party to this direction shall be construed as their having no objection to the Upper Tribunal proceeding to dispose of the matter on the papers by finding no material error of law in the decision of the Judge.
 - d. If the appellant decides to proceed with the appeal, but his appeal is dismissed as being without merit, it is only fair to bring to his attention that he and/or his representatives may find themselves at risk of a costs order being made against them.
5. The directions order was served upon the parties by the Upper Tribunal on 17 April 2024. More than the time permitted in the directions has passed and there has been no response from either party.
6. In light of the clarification provided by the Court of Appeal, and other relevant authorities, is clear that there is no material error of law in the decision of the First-tier Tribunal. The decision to dismiss the appeal is legally correct and clearly a finding within the range of those reasonably open to the judge on that occasion to make.

Notice of Decision

7. No material error of law is made out in the decision of the First-tier Tribunal.
8. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 July 2024