



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003672
First-tier Tribunal No:
EA/14819/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Lum Dajci
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No attendance or representation

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard remotely at Field House on 16 April 2024

DECISION AND REASONS

1. To avoid confusion, the parties are referred to herein as they were before the First-tier Tribunal.
2. There was no attendance by or on behalf of the appellant, although Norton Folgate Solicitors are on record as representing him. I am satisfied from examination of the Tribunal's electronic records that on 23.3.24 notice of today's hearing was issued by email to the parties and in addition by post to the Mansfield address for the appellant provided to the Upper Tribunal. Attempts were made to contact the appellant's solicitors by telephone but without success, it being stated that there was no solicitor or legal representative in the office. I also note that without any explanation the appellant's solicitors have failed to respond to the directions issued by the Tribunal, as set out below.
3. In the circumstances, I am satisfied that it is in the interests of justice and consistent with the overriding duty to deal fairly and justly to proceed with the

hearing in the appellant's absence and absence of any legal representative. In reaching that conclusion, I bear in mind that following the Court of Appeal's decision in *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921 there appears to be no viable basis to resist the respondent's appeal.

4. The relevant history can be summarised as follows.
5. By the decision of Upper Tribunal Judge Norton-Taylor issued on 21.10.22, the respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge McKinney) promulgated 6.5.22 allowing the Albanian appellant's appeal against the respondent's decision of 11.10.21 to refuse his EUSS application made on 29.6.21.
6. In essence, the First-tier Tribunal concluded that the appellant had been in a durable relationship with an EEA national prior to the specified date of 31.12.20 and that the refusal of the EUSS application was disproportionate with reference to Article 18(1)(r) of the Withdrawal Agreement (WA), which has as its purpose the facilitation and protection of the rights of EU nationals and their family members.
7. In summary, the grounds submit that the WA has no application to a person in the appellant's circumstances, an illegal entrant to the UK who had never applied for residence as a durable partner. Prior to the specified date, the appellant was not a family member and his residence as a durable partner was not being facilitated before the end of the transition period. The respondent points out that Article 18 only applies to those residing in the UK in accordance with the conditions set out therein, which do not cover the appellant's situation. For the same reasons, considerations of proportionality under the WA did not apply. Even if it did, the respondent argues that the assessment was wholly inadequate.
8. In granting permission, Judge Norton-Taylor referred to the Upper Tribunal's 2022 decision in *Celik* and issued directions for the appellant to file and serve a Rule 24 response addressing *Celik* and its applicability to the present case. As stated above, there has been no compliance by the appellant or his solicitors with the said directions, as noted by the Upper Tribunal when listing instructions were issued on 24.3.24. However, the Upper Tribunal decision has since been upheld by the Court of Appeal in *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921, promulgated on 31.7.23.
9. Unarguably, the appellant cannot meet the requirements for pre-settled status. He was neither the spouse of a relevant EEA national nor the durable partner with residence being facilitated prior to the specified date, as evidenced by a relevant document. The appellant never sought to regularise his immigration status prior to the specified date. It follows that the WA does not apply to him, and he cannot argue that the decision breaches his rights under the WA, or is disproportionate.
10. I am satisfied that the First-tier Tribunal misunderstood the relevant provisions and the law, making an unsustainable decision. The respondent's appeal must succeed. It is beyond doubt that the decision of the First-tier Tribunal involved the making of an error of law on a matter material to the outcome of the appeal and must be set aside in its entirety. On the law, there is no basis on which the appellant's underlying appeal could succeed and it must be dismissed.

Notice of Decision

The respondent's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The decision in the underlying appeal is remade by dismissing it on all grounds.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 April 2024