



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003733

First-tier Tribunal No: EA/14516/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

29th January 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARMANDO DEDOLLI
(Anonymity order not made)

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mr P Georget, instructed by Malik & Malik Solicitors

Heard at Field House on 25 January 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing the appeal of Mr Dedolli against the respondent's decision to refuse his application under the EU Settlement Scheme (EUSS) as the spouse of a relevant EEA citizen.
2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Dedolli as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The appellant, a national of Albania born on 28 December 1992, made an application under the EUSS as the spouse of his Lithuanian national wife with whom he had commenced a relationship in October 2020 and married on 25 September 2021. His application was refused by the respondent on 4 October 2021. The respondent considered that the requirements of Appendix EU of the immigration rules were not met as the appellant had not provided sufficient evidence to confirm that he was a

family member of a relevant EEA citizen prior to the specified date, 31 December 2020. His marriage took place after the specified date. The required evidence of family relationship as a durable partner was a valid family permit or residence card issued under the EEA Regulations. The respondent had no record of the appellant having been issued with such a document. It was considered by the respondent that the appellant therefore qualified for neither settled nor pre-settled status under the EUSS.

4. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Iqbal on 25 May 2022. The judge noted that the genuineness and/or the validity of the marriage was not in dispute and neither was it disputed that the marriage had taken place after 31 December 2020. The judge noted that the appellant appeared to accept that he could not meet the immigration rules in Appendix EU since his marriage had taken place after the specified date. The judge accepted that the appellant and his spouse were in a durable relationship and had been so prior to 31 December 2020. She found that the respondent's refusal of the application was a disproportionate interference with the appellant's and sponsor's rights and fundamental freedoms under EU law and that the respondent was therefore in breach of the Withdrawal Agreement, with specific reference to Article 18. She allowed the appeal on that basis.

5. The Secretary of State sought permission to appeal to the Upper Tribunal on the grounds that the judge had made a material misdirection in law on a material matter and had erred in law by allowing the appeal.

6. Permission was granted by the First-tier Tribunal on 3 August 2022. Directions were issued by the Upper Tribunal on 26 July 2023, staying the appeal pending the Court of Appeal judgment in the appeal against the Upper Tribunal's decision in Celik (EU exit, marriage, human rights) [2022] UKUT 220, and directing the Secretary of State to confirm whether she intended to continue with the appeal following that judgment.

7. Following the Court of Appeal judgment given on 31 July 2023 in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921, the Secretary of State responded to the directions on 29 August 2023 requesting that her appeal be allowed, the judge's decision set aside, and the decision re-made by dismissing the appellant's appeal. The appellant, however, confirmed that he wished to continue with his appeal, providing no reasons or grounds. Further directions were made by the Upper Tribunal on 6 November 2023, whereby the provisional view was expressed that the Secretary of State's grounds of appeal asserting that the judge's decision disclosed an error of law were bound to succeed. The appellant was required to reconsider his position in light of the Court of Appeal's judgment in Celik. The appellant, in response, again confirmed that he wished to continue with his appeal, but again provided no reasons or grounds.

8. The matter was then listed for a hearing and came before me. No further grounds of appeal were filed by the appellant.

9. At the hearing, after taking instructions from the appellant, Mr Georget accepted that the First-tier Tribunal's decision could not stand, following the Court of Appeal judgement in Celik, and that the appellant's appeal had to be dismissed. He asked me to note in my decision that there had been no challenge to the genuineness of the appellant's relationship with, and marriage to, his wife, and I do so. However it is accepted that that does not assist him in this appeal.

10. Accordingly, there being no basis upon which to distinguish this appellant's case from Celik, Judge Iqbal's decision cannot stand and must be set aside. In re-making the decision in the appellant's appeal against the respondent's decision, the appeal is, for the same reasons, bound to fail. The decision must therefore be re-made by dismissing the appeal.

Notice of Decision

11. The making of the decision of the First-tier Tribunal involved an error on a point of law. The Secretary of State's appeal is accordingly allowed, and First-tier Tribunal Judge Iqbal's decision is set aside.

12. I re-make the decision by dismissing Mr Dedolli's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 January 2024