



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003842

First-tier Tribunal No: EA/14808/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th of January 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BRUNO KELMEDI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 22 January 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Clarke promulgated on 19 July 2022, in which the Appellant's appeal against the decision to refuse his application for settled and pre-settled status under the EUSS dated 4 October 2021 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Mr Kelmedi as the Appellant and the Secretary of State as the Respondent.
2. The Appellant is a national of Albania, born on 31 December 1995, who made an application under the EUSS as the spouse of an EU national with settled status in the United Kingdom. The Respondent refused the application the basis that the requirements in EU11 of Appendix EU were not met as the Appellant was not the spouse of an EEA national by the specified date on 31 December 2020 (having married only on 26 May 2021) and did not meet the requirements in EU14 as he

was also not a durable partner of an EEA national by the specified date, there being no family permit or EEA Residence Card applied for or issued by that date.

3. Judge Clarke allowed the appeal in a decision promulgated on 19 July 2022 on the basis that the decision to refuse the application was not proportionate and contrary to Article 18(1)(r) of the Withdrawal Agreement. It was found that the Appellant did not meet the requirements of the EUSS.

The appeal

4. The Respondent appeals on the ground that the First-tier Tribunal erred in law in finding that the decision was in breach of the Withdrawal Agreement in circumstances where the Appellant was not within the scope of the same as he had no previously recognised right for the facilitation of his residence and failed to give adequate reasons for the findings on proportionality. Permission to appeal was granted on the basis of the decision in Celik (EU exit, marriage, human rights) [2022] UKUT 220 (IAC).
5. At an oral hearing on 24 January 2023, Counsel appearing for the Appellant did not invite me to depart from the decision in Celik and otherwise maintained the Appellant's position before the First-tier Tribunal to await any developments in the Court of Appeal. Shortly after the hearing, the Court of Appeal granted permission to appeal in Celik and in directions dated 30 January 2023, the outcome of this appeal was stayed pending the Court of Appeal's decision.
6. Further directions were issued on 13 October 2023 inviting the parties to consider their respective positions and agree a consent order in light of the decision in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921. The Respondent proposed a form of consent to which there has never been a response by or on behalf of the Appellant. In the absence of an agreed form of consent, the appeal was listed for disposal on 22 January 2024. The Appellant was notified of the date of hearing on 1 January 2024 but did not attend. There is no explanation for the Appellant's failure to communicate at all with either the Respondent or the Upper Tribunal. The outcome of the appeal was clear following the Court of Appeal's decision and there is no good reason why this matter should not have been settled by consent. The failure of the Appellant to do so or engage at all has led to wasted time in disposing of this appeal.

Findings and reasons

7. For the reasons given by the Court of Appeal in Celik, the First-tier Tribunal erred in law in allowing the Appellant's appeal under the Withdrawal Agreement. The Appellant was not within the personal scope of the Withdrawal Agreement and he could not therefore benefit from any of the provisions within it. As such, the First-tier Tribunal's decision must be set aside and remade to dismiss the appeal on all grounds. The Appellant can not succeed either under the EUSS itself or under the Withdrawal Agreement.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The decision is remade to dismiss the appeal on all grounds.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22nd January 2024