



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004125

First-tier Tribunal No: EA/15414/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20th May 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

XHULJO HAJRULLAJ
(No anonymity order made)

Respondent

Done at Field House on 8 May 2024

DECISION PURSUANT TO RULE 39(1)

1. For convenience Mr Hajrullaj is referred to as the appellant and the Secretary of State as the respondent.
2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Nixon dated 10 May 2022 allowing the appellant's appeal against a decision of the Secretary of State on 3 November 2021 refusing him pre-settled status under the EU Settlement Scheme.
3. The factual matrix is not in dispute. In summary the appellant is a citizen of Albania who began his relationship with his spouse in Norway in 2018. He entered the UK unlawfully in August 2018 and began cohabiting with his partner. Applications to remain as a durable partner were refused. The appellant and sponsor had intended to marry in August 2020 but there were delays because of the pandemic. The appellant did not apply for a residence card under the Immigration (European Economic Area) Regulations 2016 prior to the revocation of those Regulations on 31 December 2020. The couple married on 9 June 2021.
4. The application for pre-settled status was refused on 3 November 2021 on the basis that he was not married prior to 31 December 2020 and could not succeed

as a durable partner because he had not been issued with a residence card or family permit under the EEA Regulations.

5. The judge allowed the appeal under the Withdrawal Agreement finding that the appellant fell within its scope.
6. The grounds of appeal argued that the judge misconstrued the notion of “facilitation of residence” and had erred in finding that the appellant came under the scope of the Withdrawal Agreement pursuant to Article 18(1)(r) of the Withdrawal Agreement.
7. Permission was granted in the light of the guidance given in **Celik (EU exit; marriage; human rights)** [2022] UKUT 00220 (IAC).
8. On 8 January 2024 directions were issued requiring the parties to reconsider their respective positions in the light of Celik. They were given 21 days to respond. Neither party responded and the matter was listed for hearing. It then became apparent that the original directions had not been sent out. The directions were sent out again and on 19 April 2024 the Tribunal received a consent order signed by both parties. I am satisfied that the consent order is appropriate.
9. Pursuant to Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the parties consent to the disposal of this appeal on the following agreed basis given the indication in directions from the Upper Tribunal that the appeal cannot succeed:
 - (1) That the parties agree to the Tribunal summarily setting aside the decision of the First-tier Tribunal for error of law identified in the Secretary of State’s grounds; and
 - (2) That the Tribunal remakes the decision summarily dismissing the appeal.

Notice of Decision

10. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the appellant’s appeal against the Secretary of State’s decision dated 3 November 2021.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 May 2024