



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-004986

First-tier Tribunal No: EA/01512/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 8<sup>th</sup> of March 2024

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**ANIL KUMAR**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Richardson, Counsel instructed by Riverdale Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard at Field House on 26 February 2024**

**DECISION AND REASONS**

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Buckwell promulgated on 26 May 2022 dismissing his appeal against a refusal of his application for leave under the EU Settlement Scheme.
2. The appellant argued in the First-tier Tribunal that he was entitled to leave because he is a durable partner of an EEA citizen. The judge dismissed the appeal on the basis that the appellant did not have, and had not applied for, a "relevant document", as defined in Annex 1 to Appendix EU, before 31 December 2020, and therefore did not fall within the scope of the Immigration Rules (Appendix EU) or the EU Withdrawal Agreement. The judge also briefly considered Article 8 ECHR, and stated that the decision was proportionate.
3. There are two grounds of appeal. Ground 1 submits that the judge was mistaken to find that the absence of a relevant document meant that the requirements of Appendix EU were not satisfied. Relying on subparagraph (b)(ii)

(bb)(aaa) of the definition of a durable partner in Appendix EU, the appellant argues that there was no need for him to have a relevant document despite not otherwise having a lawful basis to stay in the UK. Ground 2 argues that the judge's Article 8 assessment was inadequate.

4. The respondent submitted a detailed Rule 24 response arguing, in summary, that:
  - (a) the effect of subparagraph (b)(ii)(bb)(aaa) is that a person who had another lawful basis to be in the UK on 31 December 2020 does not need to have had (or to have applied for) a relevant document before 31 December 2020 but a person, such as the appellant, who did not otherwise have a lawful basis to stay in the UK, does; and
  - (b) any error in the Article 8 assessment is immaterial because the judge did not have jurisdiction to consider Article 8. This is because Article 8 is a new matter requiring the consent of the respondent to be considered, in accordance with Regulation 9(5) of the Immigration (Citizens' Rights) (EU Exit) Regulations 2020, and no such consent was given in this case.
5. At the outset of the hearing Mr Richardson stated that he did not disagree with the Rule 24 response and was unable to advance any arguments to counter it.
6. In the light of Mr Richardson's position, it was unnecessary for me to hear from Mr Lindsay.
7. The decision of the First-tier stands for the reasons advanced in the respondent's Rule 24 response (as summarised in para. 4 above), which are unopposed by the appellant.

#### **Notice of decision**

8. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**5 March 2024**