



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

**Case No: UI-**  
**2022-005028**  
**First-tier Tribunal No:**  
**EA/14772/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 20 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**KLEDIAN PECI**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Not present or represented  
For the Respondent: Mr Lawson, Senior Presenting Officer

Heard at Birmingham Civil Justice Centre on 19 August 2024

**DECISION AND REASONS**

1. I shall refer to the Secretary of State as 'the respondent' and to the respondent as 'the appellant' as they appeared respectively before the First-tier Tribunal.
2. The appellant is a citizen of Albania born on 3 August 2000. He appealed to the First-tier Tribunal under the provisions of the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020 against the decision of the Secretary of State dated 6 October 2021 to refuse settled or pre-settled status under the EUSS in the UK. The First-tier Tribunal allowed his appeal on Article 8 ECHR grounds. The Secretary of State now appeals to the Upper Tribunal.

3. The appellant did not attend the hearing at Birmingham on 19 August 2024. I am satisfied that the notice of hearing has been served on him and on his representatives. Since he has not provided any satisfactory reason or excuse for his failure to attend, I proceeded with the hearing finding that it was in the interests of justice to do so.

4. The First-tier Tribunal granted permission to appeal as follows:

Following the Upper Tribunal decisions in *Celik* (EU exit, marriage, human rights) [2022] UKUT 00220 and *Batool and others* (other family members: EU exit) [2022] UKUT 00219 (IAC it is arguable that the judge erred in law in allowing the appeal.

5. The Court of Appeal has now upheld the decision of the Upper Tribunal (see *Celik* [2023] EWCA Civ 921). At [68] the court held:

The Upper Tribunal was correct in deciding that the decision of 23 June 2021 was in accordance with the requirements of the rules in Appendix EU and rule EU11 and EU14 in particular. The fact is that the appellant was not a family member at the material time. He had not married an EU national before 11 p.m. on 31 December 2020. He was not a durable partner within the meaning of Annex 1 to Appendix EU as he did not have a residence card as required and he did not have a lawful basis of stay in the United Kingdom (he was in the United Kingdom unlawfully). The appellant did not qualify for leave to remain under Appendix EU. There is no obligation to interpret or "read down" the relevant rules to reach a different result.

6. Given the agreed factual matrix, the appellant in this appeal falls squarely into the same category of case as Mr *Celik*. In the circumstances and for the same reasons set out in the passage of *Celik* which I have quoted above, I find that the Secretary of State's appeal should be allowed and that I should remake the decision dismissing the appellant's appeal against the decision dated 6 October 2021

### **Notice of Decision**

I set aside the decision of the First-tier Tribunal. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 6 October 2021 is dismissed.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 19 August 2024**