



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

Case No: UI-2022-005480

First-tier Tribunal No:  
EA/05202/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 12<sup>th</sup> of September 2024**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

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

Respondent

**and**

**ROGERIO CAIXETA SILVA  
(NO ANONYMITY ORDER MADE)**

Appellant

**Determined at Royal Court of Justice, Belfast on 3 September 2024**

**Representation:**

For the appellant: Ms S Rushforth, Senior Home Office Presenting Officer  
For the respondent: Mr Bech, instructed by ETP Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Grimes) promulgated on 10 August 2022, allowing the appellant's appeal against a decision made on 23 September 2020 to refuse his application for leave to remain under EU Settlement Scheme ("EUSS") set out in Appendix EU to the Immigration Rules. I refer to Mr Silva as the appellant as he was before the FtT for convenience only.

2. The appellant is a national of Brazil. On 10 January 2020, he applied for leave to remain under the EUSS as the dependant relative of an EEA citizen. Mr T R Keenan, who is his mother's partner. Mr Keenan and the respondent's mother are not married.
3. The refusal was based materially on the fact that the appellant did not fall within the definition of "dependent relative" as he did not have a relevant document. I note, however, that he has lived in the United Kingdom since 2012 when he was 12 years old and that the basis on which an appeal was withdrawn in 2014 in respect of an earlier decision is unclear - see the judge's decision at [10] and [14].
4. The judge noted [15] that although it was open to the appellant to have made an application under the Immigration (European Economic Area) Regulations 2016 prior to 31 December 2020, he had not done so.
5. It was argued before the First-tier Tribunal that the appellant came within the scope of article 10.3 of the Withdrawal Agreement. The judge agreed with that submission, finding [24] that the appellant was within scope on the basis that the application under the EUSS constituted facilitation, and allowed the appeal on the basis that the decision breached the appellant's rights under the Withdrawal Agreement.
6. The Secretary of State sought permission to appeal, relying on Batool and others (other family members: EU Exit) [2022] UKUT 219 on the grounds that the Withdrawal Agreement did not apply, as there had been no facilitation of entry as an application under the EUSS was not an application for facilitation under the Immigration (European Economic Area) Regulations 2016, and thus the appellant did not fall within the scope of the Withdrawal Agreement. It is also submitted that returning the appeal to the Secretary of State to conduct an examination of the appellant's personal circumstances was not permissible either.
7. Permission to appeal on all grounds was granted on 7 November 2022.
8. I heard brief submissions from both representatives, Mr Bech appreciating the difficulty his client faced in the light of Batool and Celik v Secretary of State for the Home Department [2023] EWCA Civ 921. He accepted that the appellant cannot meet the requirements of EUSS.
9. In the light of the binding decisions in Batool and Celik, I am satisfied that that the judge erred in concluding that the appellant came within the scope of article 10.3 of the Withdrawal Agreement as his application under the EUSS did not constitute facilitation for those purposes. Accordingly, the decision must be set aside as it involved the making of an error of laws as his residence in the United Kingdom had not been facilitated, and so he could not benefit from the Withdrawal Agreement.

10. In the circumstances, as it is accepted that the appellant is not entitled to leave under the EUSS and it is not argued that there is any other basis on which he falls within the Withdrawal Agreement; and, given the limited grounds of appeal available, I remake the decision by dismissing it under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by dismissing the appeal.

Signed

Date: 3 September 2024

Jeremy K H Rintoul

Judge of the Upper Tribunal