



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006246
First-tier Tribunal No:
EA/02193/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD NASIR KHAN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mrs Arif, a Senior Home Office Presenting Officer.

For the Respondent: No appearance.

Heard at Birmingham Civil Justice Centre on 12 August 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Dieu ('the Judge'), promulgated on 24 October 2022, in which the Judge allowed Mr Khan's appeal against the refusal of his application for a family permit under the EU Settlement Scheme.
2. Mr Khan is a citizen of Pakistan born on 28 September 1989. His application is dated 30 June 2021 and was refused on 30 January 2022.
3. The Judge's findings are set out from [6] of the decision under challenge. The Judge accepts Mr Khan and the EU national sponsor had been in a durable relationship since at least May 2019. At [7] - [8] the Judge writes:
 7. Whilst Appendix EU refers to 2 years co-habitation akin to marriage, the EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members Version 17.0 guidance at p118 clarifies that this is not a requirement but rather a rule of thumb. Each case is to be assessed on its own merits. I find on assessing all

of the evidence in the round that there is good evidence of a durable relationship before the relevant date. I accept that the Appellant and Sponsor are very much committed to each other and they Appeal Number: EA/02193/2022 3 intend to marry. This comes following years of living together in circumstances akin to marriage.

8. It follows that the Appellant meets the requirements of the EUSS as a durable partner and the appeal is allowed.

4. The Secretary of State sought permission to appeal which was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
 2. The grounds assert that the Judge erred in law in failing to properly consider the provisions of Appendix EU. Under the durable partner route, the rule requires a “relevant document” as evidence that residence had been facilitated on the EEA Regulations. The Appellant had no such document.
 3. Having considered the grounds of appeal and the judgment in full, I consider there to be an arguable material error of law in this matter. Whilst the judge has made findings of fact on the durable nature of the relationship, he/she has not considered the requirement for a “relevant document”.
 4. The grounds and the decision and reasons disclose an arguable material error of law and permission for appeal is therefore granted on all grounds.

5. The appeal, along with others based on similar legal principles, was stayed following permission being granted by the Court of Appeal against the decision of the Upper Tribunal in Celik. That decision was upheld by the Court of Appeal and their judgement handed down as Celik v Secretary of State for the Home Department [2023] EWCA Civ 921.
6. On 9 October 2023 Upper Tribunal Judge Canavan issued a direction to the parties for them to consider their situation in light of the decision of the Court of Appeal, but providing that if no response had been received within a specified period the appeal will be listed for a disposal hearing.
7. The provisional view of the Tribunal communicated in the directions order was that having reviewed the appeal the grounds of appeal asserting an error of law by the Judge were bound to succeed.

Discussion and analysis

8. The matter comes back before the Tribunal following their being no response for the purposes of a disposal hearing.
9. In light of the correct interpretation of the law the Secretary of State’s appeal is allowed. Even though it was found Mr Khan is in a durable relationship that is not the applicable legal test. The Withdrawal Agreement preserved rights under EU law that existed prior to Brexit and did not, in relation to extended or other family members, create any new right.
10. Those within the category of other family members had no automatic right to enter the UK unless entry had been facilitated by the Secretary of State. That was achieved by making a formal application under the Immigration (EEA) Regulations 2016. In this case no such application was made prior to 11 PM 31 December 2020. If an application had been made and succeeded, a document would have been issued by the Secretary of State facilitating such entry. That would have been a ‘relevant document’.
11. As no such application was made and no evidence provided to show that Mr Khan held a ‘relevant document’ he could not succeed.
12. I find the Judge has materially erred in law and set the decision aside.
13. In light of the facts as found and proper application of the law there is only one outcome of the appeal. I therefore substitute a decision to dismiss the appeal.

Notice of Decision

14. The Judge has been found to have materially erred in law. I set the decision of the First-tier Tribunal aside.

15. I substitute a decision to dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 August 2024