



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006331
First-tier Tribunal No:
EA/12478/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April 2024

Before

Upper Tribunal Judge O'CALLAGHAN
Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mr RONALDO LULASHI
(NO ANONYMITY DIRECTION)

Respondent

Heard at Field House
On 12 April 2024

Representation:

For the Appellant: Ms S McKenzie, Senior Home Office Presenting Officer

For the Respondent: no appearance

DECISION AND REASONS

1. Permission to appeal was granted to the Secretary of State by First-tier Tribunal Judge Beach on 12 September 2022 against the decision to allow the Respondent's appeal made by First-tier Tribunal Judge Aziz in a decision and reasons promulgated on 6 May 2022. The Respondent had applied for pre-settled status under Appendix EU claiming to be the durable partner/spouse of a relevant EEA citizen. The Judge had allowed the appeal, finding the Respondent benefitted from the provisions of the EU Withdrawal Agreement. Although the relationship relied on had not lasted for two years as at the date of the application, the Judge found that there was sufficient evidence to show that there was a durable partnership, including the subsequent marriage.
2. The Respondent is a national of Albania, born on 10 September 1999. He had entered the United Kingdom illegally on 28 March 2019 and has no status. He applied for pre-settled status under the EUSS as the durable partner/spouse of Ms Andrea Ungurean ("Ms Ungurean"), a Romanian national who was granted pre-settled status under the EUSS. The Respondent and Ms Ungurean claimed that they had been durable partners since July 2020. They subsequently married in the United Kingdom on 14 March 2021, having had their plans delayed by the Covid-19 lockdown. The Respondent's application was refused on 13 August 2021.
3. Permission to appeal was granted because it was considered arguable that the Judge had erred in his approach. The Respondent's marriage took place after the end of 2020 and he could not succeed under the durable partner route as he did not have a relevant document. The Judge erred by finding that the Respondent was protected by the EU Withdrawal Agreement, because the Respondent had not applied for facilitation of entry and residence prior to the relevant date. Having found that the Appellant was not lawfully resident at the end of 2020, the Judge should have dismissed the appeal.
4. The appeal was stayed in the Upper Tribunal pending the Court of Appeal's decision in Celik [2023] EWCA Civ 921. This was an appeal from Celik (EU exit; marriage, human rights) [2022] UKUT 000220 (IAC) and in effect the Upper Tribunal's decision was upheld. After the Court of Appeal's decision was given, Upper Tribunal Judge Macleman invited the Respondent to consider his position as the facts of his case were largely similar to those in Celik (above), meaning that he was unlikely to succeed in his appeal: see Upper Tribunal Judge Macleman's directions dated 11 October 2023.

5. Unfortunately the Upper Tribunal's directions were ignored, despite further follow up directions, the last of which was dated 15 March 2024. By then the appeal had been listed for hearing. On 21 March 2024 the Respondent's solicitors wrote to the tribunal stating that Respondent no longer wished to contest the proceedings.
6. Ms McKenzie for the Secretary of State indicated that she was content for Celik (above) to be applied. The appeal to the Upper Tribunal should be allowed, Judge Aziz's decision set aside and the original appeal to the First-tier Tribunal remade and dismissed.
7. By implication it was accepted on the Respondent's behalf that he did not hold the required relevant document and there had been no facilitation of his presence in the United Kingdom. Nor had the Secretary of State's consent been given to raising Article 8 ECHR as a new matter, so that could not be considered. The Respondent did not meet the requirements of Appendix EU of the Immigration Rules. By implication it was accepted that the Withdrawal Agreement had no application.
8. The panel accordingly ruled that the First-tier Tribunal Judge had misdirected himself. The point on which the Respondent had succeeded at first instance was not available to him. The decision was accordingly set aside for error of law.
9. As no further findings of fact were required, the original decision was remade. The new Immigration Rules implementing Brexit are of some complexity and have given rise to differences of interpretation, compounded by questions concerning the effect of the disruption caused by the Covid 19 pandemic. The law has now been helpfully clarified by the Upper Tribunal and then by the Court of Appeal, providing guidance which had not previously been available. There was no challenge to the First-tier Tribunal Judge's findings of fact. These included, as was accepted, that the Respondent did not hold a relevant document and was in the United Kingdom illegally. Those findings meant that the Judge's finding that there was a durable partnership predating the post Brexit marriage took the Respondent's case no further. The fact that the Judge found that the marital relationship was genuine may be raised by the Respondent in a fresh application made under the Immigration Rules.
10. Accordingly, the Tribunal ruled that the decision and reasons were subject to material error of law, for the reasons given

above. It follows that the Respondent's appeal must be dismissed.

DECISION

The Secretary of State's appeal to the Upper Tribunal is allowed.

There were material errors of law in the First-tier Tribunal's decision and reasons, which is accordingly set aside.

Following a summary rehearing, the original decision was remade.

The original appeal is dismissed. No fee award can be made.

Signed R J Manuell Dated 17 April 2024

Deputy Upper Tribunal Judge Manuell