



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

Case No: UI-  
2022-006396  
First-tier Tribunal No: EA/16788/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 19 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANE  
DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**QAISER HUSSAIN  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Tan, Senior Presenting Officer  
For the Respondent: Mr Afzal

Heard at Manchester Civil Justice Centre on 18 November 2024

**DECISION AND REASONS**

1. We shall refer to the appellant as 'the respondent' and to the respondent as 'the appellant' as they respectively appeared before the First-tier Tribunal.
2. The appellant is a citizen of Pakistan who was born on 20 April 1989. He appealed to the First-tier Tribunal against a decision of the respondent dated 9 November 2021 refusing his application for pre-settled status pursuant to the EU Settlement Scheme (EUSS). The First-tier Tribunal, by a decision promulgated on 28 July 2022, allowed the appeal. The Secretary of State now appeals to the Upper Tribunal.

3. Granting permission, First-tier Tribunal Judge Hatton wrote:

The grounds primarily assert the Judge erred in finding the Respondent's refusal to grant the Appellant a right of residence under the EU Settlement Scheme ("EUSS") breached the terms of Appendix EU of the Immigration Rules. In applying paragraph EU14 of Appendix EU, the Appellant was required to show he is the family member of a relevant EEA citizen. Given it was accepted the Appellant did not marry his EEA national spouse until after the specified date of 11pm on 31 December 2020, he was required to demonstrate he is the "durable partner" of a relevant EEA citizen to satisfy the definition of "family member of a relevant EEA citizen" at Annex 1. Correspondingly, in accordance with the definition of "durable partner" at Annex 1, he was required to demonstrate that he has a "relevant document" as the durable partner of a relevant EEA citizen. I note the Judge's decision makes no reference to the "durable partner" definition at Annex 1. Accordingly, I am obliged to find the Judge arguably erred in asserting at [24] that the conditions for pre-settled status under paragraph EU14 of Appendix EU were satisfied because the Appellant failed to meet the definition of "durable partner" at Annex 1 for want of a relevant document [see above].

4. Having been unrepresented before the First-tier Tribunal, the appellant had instructed by Afzal of IIAS Solicitors to appear for him at the Upper Tribunal initial hearing. Mr Afzal accepted that the decision of the First-tier Tribunal was flawed by legal error such that it fell to be set aside. In particular, at [24] he submitted that the judge had failed to explain in sufficient detail why he considered the evidence proved that the appellant and sponsor were in a durable relationship. He further submitted that the Upper Tribunal should hear the evidence of the appellant and sponsor concerning their relationship and remake the decision. He submitted that that the appellant should now succeed on Article 8 ECHR grounds.
5. Mr Tan, Senior Presenting Officer for the Secretary of State, submitted that the decision of the First-tier Tribunal fell firmly within the category of case considered in *Celik* [2023] EWCA Civ 921. The First-tier Tribunal had erred in law by allowing the appeal because, whilst he may or may not have been in a durable relationship with the sponsor, the appellant 'had as ... no substantive rights under the EU Withdrawal Agreement, unless [he could show that his] entry and residence were being facilitated before 11pm GMT on 31 December 2020 or [that he had] applied for such facilitation before that time.' (see *Celik* [2022] UKUT 220 (IAC), headnote (1)). Moreover, the Upper Tribunal in *Dani* [2023] UKUT 293 (IAC) had considered Article 8 ECHR in the context of an EUSS appeal (such as that made by the present appellant) and had concluded that (i) 'The mere refusal of leave to remain under the EUSS is not, without more, a "human rights claim" under section 113(1) of the 2002 Act.' (ii) 'Whether Article 8 is engaged by a decision to refuse an EUSS application is not "relevant to

the substance of the decision appealed against"; the Tribunal cannot not consider it.' and (iii) 'In any event, Article 8 will not, without more, be engaged by a decision to refuse leave to remain under the EUSS'. It was, accordingly, not open to the Upper Tribunal to remake the decision on the basis of Article 8 ECHR. Instead, having set aside the First-tier Tribunal decision, Mr Tan submitted that the Upper Tribunal should remake the decision dismissing the appeal.

6. As we told the parties in court, we prefer the submissions of Mr Tan. It is irrelevant that the appellant was without legal representation before the First-tier Tribunal, as Mr Afzal acknowledged. For the reasons given in *Dani*, it would be pointless for the Tribunal to hear evidence and submissions regarding Article 8 ECHR since, by a correct application of the law, the Upper Tribunal would be bound to remake the decision by dismissing the appeal. We therefore declined to hear any evidence from the appellant and sponsor, who were both present in court, or any submissions from Mr Afzal. We told the parties that we would promulgate a written decision.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. We have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 9 November 2021 is dismissed.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 18 November 2024**