



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006669

First-tier Tribunal No: EA/13255/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12th November 2024

Before

UPPER TRIBUNAL JUDGE KEITH

Between

The Secretary of State for the Home Department

Appellant

and

Atef Zahi
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Terrell, Home Office Presenting Officer
For the Respondent: Representing himself

Heard at Field House on 12 July 2024

DECISION AND REASONS

1. These written reasons reflect the full oral decision which I gave to the parties at the end of the hearing. I refer to the parties at they were before the First-tier Tribunal: the Claimant and the Secretary of State.
2. The Secretary of State appeals the decision of a Judge of the First-tier Tribunal, Judge Smeaton (the 'Judge') dated 15th June 2022, in which the Judge had considered and allowed an appeal under the Withdrawal Agreement. The Judge had considered the fact of the Claimant's marriage to his wife, an EU (Greek) national, on 5th July 2021. Prior to 30th June 2021, but after 31st December 2020, the Claimant had applied under Appendix EU based on his relationship. That application was refused on 20th August 2021 on the basis that the couple had not married until 5th July, after the end of the transition period and as a consequence the Claimant did not meet the requirements of Appendix EU of the Immigration Rules.
3. The Secretary of State considered and rejected any leave to remain on the basis that the Claimant did not have a family residence permit or residence card and as a consequence, the Claimant has no rights under the Withdrawal Agreement.

4. When considering the appeal, the Judge came on to consider the proportionality of that decision and concluded at §50 that refusal would, by virtue of Regulation 19(1)(r) of the Withdrawal Agreement, be wholly disproportionate and he therefore allowed the appeal. The Secretary of State appealed against that decision and a Judge of this Tribunal, Judge Perkins, issued directions based on a preliminary view, that, as per the decision of Celik (EU exit; marriage; human rights) [2022] UKUT 00220, a person in a durable relationship in the UK with an EU citizen has no such substantive rights under the EU Withdrawal Agreement unless a person's entry and residence were facilitated before 11pm GMT on 31st December 2020; or that the person had applied for such facilitation before that time, which meant that the Judge had arguably erred in law and that the Claimant's appeal was bound to be dismissed. The Claimant did not respond to those directions so a hearing was listed to consider what he had to say.
5. I have considered the representations before me. The Claimant represented himself and upon it being discovered that he needed an interpreter, I rearranged a remote interpreter in Arabic (he is an Algerian national). I was satisfied that the interpretation was sufficient and that the Claimant was able to participate in the hearing. He did not have legal representation, so it was necessary to explain matters in a simple and clear manner. Mr Terrell re-emphasised the facts and argued that as a consequence of Celik, in particular §56; and §50 of the Judge's decision, the Judge unarguably erred in law and the Claimant's appeal could not have succeeded. For his part, the Claimant asked what sort of document he ought to have applied for and I confirmed that I could not advise him but that in very broad terms, one example might be an EEA residence card, before the relevant date.
6. The Claimant reiterated that he had asked a solicitor for advice but it would cost lots of money and would take up to two years for an alternative application.
7. Whilst one may have sympathy for the Claimant in this case, I must consider first whether the Judge erred in law. If he did and I go on to remake the decision, second, whether the Claimant's application under Appendix EU had any merit, bearing in mind the specific requirements.
8. I am satisfied, for the reasons set out in Celik, that the Judge did err in law because the proportionality question never arose, as the Claimant was not within scope of Article 10, as Mr Terrell submits.
9. I have considered whether to retain remaking in the Upper Tribunal pursuant to §7.2.(a) and (b) of the Senior President's Practice Statement. The facts are not disputed. The law is clear. Remaking is clearly appropriate in this Tribunal. In the circumstances, I remake the appeal by dismissing the Claimant's appeal, because the Claimant cannot meet the requirements of Appendix EU; has no such rights under the Withdrawal Agreement and has submitted no basis on which he does.

Notice of decision on error of law

Judge Smeaton erred in law in his decision dated 15th June 2022, such that his decision cannot stand and is set aside. I have remade the decision by dismissing the Claimant's appeal.

J Keith, 29th July 2024
Judge of the Upper Tribunal
Immigration and Asylum Chamber