



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000611
First-tier Tribunal No:
EA/05328/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

ELINA KNIAZEVA
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Stedman, Direct Access counsel
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 10 May 2023

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Maka promulgated on 9 February 2023.
2. Permission to appeal was granted by First-tier Tribunal Judge T Lawrence on 2 March 2023.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant is a national of Greece who married her Greek national husband in Greece on 14 October 2021. She has been resident in Greece at all times prior to the specified date of 31 December 2020.
5. On 13 February 2022, the appellant made an application under the EU Settlement Scheme in order to remain with her husband in the United Kingdom. That application was refused by way of a decision dated 25 May 2022 which is the decision under challenge in this appeal. The Secretary of State informed the appellant that she could not be granted leave owing to her marriage because this had taken place after the specified date. The respondent also considered that the appellant had not provided sufficient evidence to confirm that she was a durable partner, with reference to a telephone conversation in which the appellant had stated that she had not lived with her husband prior to 31 December 2020.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, there was no factual dispute. The judge accepted that the appellant and her partner had been in a long-term relationship which had been cemented by marriage but concluded that the appellant had no substantive rights because her entry and residence in the United Kingdom was not facilitated prior to the specified date, applying *Celik* (EU exit; marriage human rights) [2022] UKUT 00220 (IAC).

The grounds of appeal

7. There are three grounds of appeal. Firstly, that the judge did not apply the relevant law, in that it was irrelevant that the appellant was not issued with a relevant document. Secondly, the judge's findings as to the durability of the relationship were irrational given his finding that the parties were in a long-term relationship. Lastly, the judge failed to make adequate findings on the evidence before him regarding the relationship.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the Judge materially erred in law regarding the issue of whether the decision under appeal was in accordance with residence scheme immigration rules, and in particular whether the applicable eligibility criteria required the Appellant to have held a 'relevant document' as defined by those rules.

9. The respondent did not file a Rule 24 response.

The hearing

10. When this matter came before me, Ms Everett confirmed that she had seen no Rule 24 response. Having considered the grounds for herself, she stated that she conceded the principal error identified in the grounds, that being that the judge did not apply the relevant law. Furthermore, Ms Everett said that in view of the judge's unchallenged findings, the appellant should succeed on remaking. Ms Everett's rightly made concession accorded with my view of the grounds, and I therefore set aside the decision of the First-tier Tribunal, while retaining factual findings. I remade the decision by allowing the appeal.

Decision on error of law

11. The First-tier Tribunal Judge materially erred in applying the wrong legal test, as well as in arriving at an inconsistent and irrational conclusion on the evidence. The sole issue before the judge was whether the relationship between the appellant and her husband was durable prior to the specified date and that it continued to the date of application. The respondent's guidance: EU Settlement Scheme Family Permit and Travel Permit Version 14, dated 9 November 2022 - states:

"The required evidence of family relationship where the applicant was not resident in the UK and Islands as the durable partner of a relevant EEA citizen before the specified date, or they are a joining family member (and where they are not the durable partner of a qualifying British citizen), is evidence which satisfies you that the durable partnership was formed and was durable before the specified date."

12. At [3] of the decision and reasons, the judge rightly recorded that the issue was whether the appellant was in a durable relationship with her partner before the specified date. At [24], the judge appeared to answer this question positively before becoming side-tracked by the findings in *Celik* and the irrelevant matter of whether the appellant had a relevant document. This was not a *Celik* style case, which is clearly apparent from the decision letter.
13. The appellant did not need a relevant document as she was resident in Greece prior to the specified date of 31 December 2020, and only needed to demonstrate that she was a durable partner. At [27], the judge finds that the fact that the appellant and her husband were in a long-term relationship "does not assist." This finding is irrational given that the issue in the appeal was precisely that.
14. For the foregoing reasons, the decision of the First-tier Tribunal cannot stand and is set aside, albeit with the unchallenged findings as to the appellant's relationship preserved.

Remaking

15. It is not in dispute that the appellant and her now husband have been in a relationship since 2018. As they lived in separate countries, the relationship was maintained by regular visits. The couple intended to marry earlier and like so many others their plans were thwarted by the pandemic. The Secretary of State was not satisfied with the evidence provided as to the relationship. Evidence which was served in advance of the First-tier appeal included a large quantity of annotated photographs of the couple dated from April 2018 onwards. According to the respondent's policy, a durable relationship is one in which there is a period of two years cohabitation or where there is "significant other evidence." The starting point for remaking is the judge's finding at [24] that "I find that the parties have been in a long-term relationship." That finding, along with the absence of dispute as to the genuineness of either the relationship or marriage is, effectively, dispositive of this appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

I substitute a decision allowing the appeal on the basis that the requirements of Appendix EU have been met.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 May 2023

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 May 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email.

