



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001393  
EA/10163/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 January 2023**

**Decision & Reasons Promulgated  
On 21 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**ZAIM PIRA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sowerby, Counsel instructed by Mayfair Solicitors  
For the Respondent: Ms Gilmour, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 18 November 2021 of First-tier Tribunal Judge Wylie which refused the appellant's appeal against the respondent's decision dated 24 May 2021 which refused leave under the EU Settlement Scheme (EUSS) as set out in Appendix EU of the Immigration Rules.
2. The appellant is a national of Albania and was born on 28 January 1993.

3. On 30 November 2020 the appellant applied for leave under the EU Settlement Scheme (EUSS) as set out in Appendix EU of the Immigration Rules as the family member of his partner, a Greek national. The appellant maintained that he had met his partner in Greece in 2018 and they had started a relationship. He had come to the UK illegally in March 2019. His partner had come to the UK in September 2020 and the couple cohabited thereafter. The appellant's partner was granted pre-settled status on 21 December 2020. The appellant maintained that the couple tried to marry but were unable to do so prior to 31 December 2020 because of Covid restrictions. They eventually married on 23 April 2021 and the application to the respondent followed.
4. That application was refused by the respondent on 24 May 2021. The respondent did not accept that the appellant had provided sufficient evidence to confirm that he was a family member of a relevant EEA national prior to 31 December 2020 or that he had been a durable partner at that time.
5. The appellant appealed to the First-tier Tribunal and the appeal came before Judge Wylie on 9 November 2021. The hearing was conducted remotely.
6. The First-tier Tribunal accepted that the appellant and his partner were in a genuine and subsisting relationship; see paragraph 32. The First-tier Tribunal did not accept that the appellant had shown that he had been unable to marry prior to 31 December 2020 because of Covid restrictions; see paragraphs 37 to 42. The judge found in paragraph 37 that there was not "sufficient reliable evidence to support this claim". She considered that if attempts had been made then "I would have expected the appellant to have produced documentation confirming this" and also a reply to any request to assign a date for the marriage; see paragraph 39.
7. The judge also found that the Covid regulations relied upon by the appellant did not show that they were unable to marry. They indicated only that any ceremony could only have up to 6 people present; see paragraph 40. It was the appellant's choice to defer the wedding until more people could attend; see paragraph 41. In paragraph 42 the judge found that it had not been shown that the couple were prevented from marrying because of the pandemic "in the absence of any independent evidence that it was not possible for them to arrange to marry before the specified date".
8. The First-tier Tribunal also did not accept that the appellant was a durable partner as of 31 December 2020; see paragraphs 43 to 48. The judge reached this conclusion as, even if it was accepted that the couple had known each other since 2018, they lived apart until the partner came to the UK in September 2020. There was evidence that the relationship only became more serious then; see paragraph 44. The judge did not find that cohabitation from October 2020 or the marriage in April 2021 were factors capable of showing that the relationship was durable as of 31 December

2020; see paragraph 45. The judge found that there was not “significant evidence” such that the definition of a durable partner where they had not lived together for two years was met.

9. In paragraphs 50 to 60 the judge found that it was unclear whether a right of appeal under Article 8 ECHR was available to the appellant. She proceeded to make that assessment in the event that this was a permissible ground of appeal, finding that the appellant had always been in the UK illegally, and that the couple could live together in Greece or Albania without difficulty and that the respondent’s decision did not breach Article 8 ECHR.
10. The appellant was granted permission to appeal to the Upper Tribunal on 28 June 2022.
11. Ground 1 maintained that the First-tier Tribunal in finding that there was insufficient evidence of the inability to marry prior to 31 December 2020 because of the pandemic. I did not find that this ground had merit. Other than the evidence of the appellant and his partner, which was not entirely clear (see paragraph 38), it was open to the First-tier Tribunal to find that had the couple taken serious steps to marry there would have been documentary evidence of this but there was not.
12. The grounds referred to emails held by the appellant’s partner showing that the couple had been prevented from marrying. Those documents were not before the First-tier Tribunal. Nothing before me explained why they could not have been provided. If they were on the partner’s phone, as suggested in the grounds, it was clear to the parties that the hearing was to be held remotely and so steps could have been taken to send these documents to the Tribunal rather than expecting to be able to show them on the phone at the hearing. Nothing suggests that the partner did try to show these documents at the hearing or that an application for an adjournment was made so that they could be provided to the First-tier Tribunal. The grounds merely state that the partner “was unable” to show the documents.
13. Further the grounds of appeal made to the First-tier Tribunal and to the Upper Tribunal referred to these emails being attached to the grounds. They were not. This was conceded for the appellant at the hearing. This was said in an email dated 11 January 2022 from the appellant’s legal representatives to be because of a “technical error”. Without more, I did not find that to be a satisfactory explanation for the omission of these documents, additionally so where this was presumably supposed to have occurred twice.
14. Two documents were provided on the morning of the hearing after adjourning to allow Mr Sowerby to follow this matter up with the legal representatives and in order that he could make a Rule 15(2A) application to admit documents that had not been before the First-tier Tribunal. Mr Sowerby had the most basic of instructions in regards to the Rule 15(2A)

application but made it nevertheless in order to attempt to assist his appellant's position. The primary difficulty with the application to admit the new documents was that there was no explanation at all as to why they had not been before the First-tier Tribunal. The First-tier Tribunal hearing being remote did not prevent the material being taken off the partner's phone and provided to the First-tier Tribunal. It was my conclusion that there had been an unreasonable delay in producing this evidence and that without a cogent explanation as to why it not been provided to the First-tier Tribunal, it was not appropriate to admit it now.

15. I should add that it did not appear to me, in any event, that at their highest the documents could have assisted the appellant. If nothing else, it was not disputed for the appellant before me that the Covid regulations referred to in the grounds could show that the appellant was prevented from marrying prior to 31 December 2020. They stated only that the size of the wedding would have been limited. This meant that Ground 2 had no merit. It also meant that even if the appellant had provided documents to the First-tier Tribunal showing that he had tried to marry before 31 December 2020 the evidence did not show that this was delayed or otherwise prevented by the pandemic.
16. Ground 3 maintained that the First-tier Tribunal erred in finding that the appellant was not in a durable relationship as of 31 December 2020. I did not find that this ground had merit. The First-tier Tribunal was entitled to place weight on the guidance on what might constitute "other significant evidence of the durable relationship"; see paragraphs 46 to 48 of the decision. It was clearly open to the judge to conclude that the limited period of cohabitation and being in different countries for a prolonged period indicated that the couple were not in a durable relationship at the material time. The judge took into account the fact of the marriage in 2021 but this did not oblige her to find that there had been a durable relationship as of December 2020.
17. Ground 4 maintained that the appellant had a right of appeal under Article 8 ECHR. The case of Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC) is a complete answer to this ground. In paragraphs 92 to 97 the Presidential panel explained that in an Appendix EU appeal, "the raising of a human rights claim will always be a" new matter", except where, for some reason, the respondent has already considered it." The respondent had not already considered Article 8 ECHR here. Where there was a "new matter" the respondent's consent had to be sought and here, as in Celik, "the respondent's consent was not sought by the appellant, let alone given." Following Celik, as the respondent had not consented, the First-tier Tribunal was "prevented by regulation 9(5) from considering any Article 8 argument". Where there was no Article 8 jurisdiction, no material error arises from the approach of the First-tier Tribunal here in taking a "belt and braces" approach or from any aspect of the Article 8 ECHR assessment that did take place.

18. For these reasons, I did not find the decision of the First-tier Tribunal disclosed an error on a point of law and the decision is upheld.

**Decision**

19. The decision of the First-tier Tribunal does not disclose an error and shall stand.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 11 January 2023