



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002366
EA/11646/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 24th October 2022**

**Decision & Reasons Promulgated
On the 19th January 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

VILSON HOTI

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nath, Counsel instructed by Axis Solicitors Limited
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Albania against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the Secretary of State refusing him leave under the EUSS scheme.
2. Permission to appeal was ordered by the First-tier Tribunal on 27 April 2022. The broad thrust of the grounds is that the judge's decision was not explained adequately or that the reasons given were perverse. I will consider the

grounds, drawn by Mr Mohammad Azmi of Counsel and dated 14 March 2022. Mr Azmi did not appear before me. It was of particular concern that the findings were unfair because the judge took points that had not been taken by the Secretary of State nor reasonably suggested by the points that were taken.

3. There is a Rule 24 notice for the respondent dated 17 June 2022. The tone of this notice is that the decision was right in law in the sense that it was inevitable that the appeal would be dismissed. The fact is that the appellant did not marry his wife at the required time and so did not come within the provisions relied upon and so the appeal had to be dismissed. Proportionality was not a relevant consideration.
4. Unlike the First-tier Tribunal and Counsel's grounds I have the benefit of the decision of this Tribunal by its then President, Lane J, with Upper Tribunal Judge Hanson and McWilliam in **Celik v SSHD [2022] UKUT 00220 (IAC)**. This is a highly authoritative decision confirming the Secretary of State's arguments of law in the Rule 24 notice. Mr Nath was aware of the decision in **Celik** but did not address me about it.
5. I find that the decision of the First-tier Tribunal was right and any errors were immaterial.
6. However, I wish to make it plain that I see merit in the decision to grant permission to appeal and in the complaints made in the grounds of appeal. I have not had to investigate the points further because that is not my function. If the errors are made out they are immaterial but I do not know how things might develop over coming months or years and any decision maker charged with remaking the decision or remaking an application should know that the findings of fact by the judge that were difficult for the appellant were the subject of criticism and were not reinforced in the Rule 24 notice and nothing in my decision indicates that the complaints in the grounds were ill-conceived. The findings in the Decision and Reasons must be treated with a great deal of circumspection but the fact is, for the reasons given, the errors if made out would not alter the outcome.

Notice of Decision

7. The First-tier Tribunal did not err materially and I dismiss the appeal against this decision.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 14 November 2022