



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Ce-File Number: UI-2022-
002757**
**First-tier Tribunal No:
EA/12236/2021**

THE IMMIGRATION ACTS

**Heard at Field House IAC
On the 18 November 2022**

**Decision & Reasons Promulgated
On the 10 March 2023**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MERGIM KOLGJINI
(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Ms E Harris, instructed by Briton Solicitors

DECISION AND REASONS
(extempore)

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter the claimant, against a decision of the Secretary of State refusing him pre-settled status under the EU Settlement Scheme. The decision of the First-tier Tribunal is clearly reasoned and shows consideration on the part of the First-tier Tribunal Judge but it was made in March of this year and without the benefit of much guidance from this Tribunal or elsewhere on the application of the appropriate law.
2. Since this case was decided the Tribunal has published a decision in the case of **Celik v Secretary of State for the Home Department** reported at **[2022] UKUT 220 (IAC)**. This is a decision of the then President of the Tribunal, Mr Justice Lane, sitting with Upper Tribunal Judges Hanson and McWilliam that was dealing particularly with the proper approach to cases such as this and made rulings that are of no assistance whatsoever to the claimant and considerable assistance to the Secretary of State.
3. Ms Harris began by renewing an application that had already been made to the Tribunal to stay the proceedings pending the outcome of the decision in the Court of Appeal in **Celik**. The Court of Appeal has not given permission to appeal but permission is being sought; it has been refused by the Upper Tribunal. From a purely human point of view we do understand the point that Ms Harris was making. The claimant wants to keep all rights open; he is not in a position to finance appeals easily and really does not see what harm there is in waiting. The answer to that of course is that the law has to be applied as it is, not as somebody thinks it might be on some undetermined occasion, and although we understand why the application was made, we see no reason whatsoever to stay this case until the possible outcome of an appeal that has not yet been permitted. It follows therefore we go ahead with matters as they are today.
4. Mr Avery really said nothing because permission had been granted on grounds given by the Secretary of State which state the position clearly, and Ms Harris had little to say because she had given a perfectly sensible Rule 24 notice which covered all the available points and saw no point in developing them further. We recognise that **Celik** is not strictly binding but as we have already indicated we have every intention of following it, not simply out of judicial comity but because it is a closely reasoned decision and the reasons we respectfully adopt.
5. The fundamental problem here identified by the Secretary of State is that the First-tier Tribunal misunderstood the scope and nature of the hearing and did not appreciate the importance of the relevant document which is a requirement of the Rules to show that a person is qualified to make the application. Unless that document exists there is no room to discuss proportionality, there are just no rights that are engaged that have to be considered in a proportionate way. The application has to fail because the applicant did not have the necessary documentation and once this point is appreciated, and it is explained rather clearly in **Celik**, it is clear that the appeal should have been dismissed.

6. In the circumstances and whilst noting Ms Harris' formal opposition to the decision in **Celik**, we find the First-tier Tribunal erred, we set aside its decision and we substitute a decision dismissing the appeal against the decision of the Secretary of State.

Notice of Decision

The First-tier Tribunal erred. We set aside its decision and substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 10 January 2023