



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

Appeal Number: UI-2022-002569  
EA/12797/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 October 2022**

**Decision & Reasons Promulgated  
On 9 February 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

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

Appellant

**and**

**MR THOMAS KWABENA AGYAPONG  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer  
For the Respondent: Miss D Ofei-Katia instructed by BWF Solicitors

**DECISION AND REASONS**

1. The Respondent to the Secretary of States appeal , a national of Ghana, date of birth 7 February 1970, made an application under the EU Settlement Scheme (EUSS) which was refused by the Secretary of State on 30 June 2022.

2. The Secretary of State had raised the point that the Respondent's marriage post-dated the end of the transitional period (the specified period) and as a result their claim from which it was inferred there was a durable relationship had not been considered by the Secretary of State, albeit it was clear the Secretary of State had not raised any particular detailed objections on that point. The matter came before First-tier Tribunal Judge Morgan on 20 January 2022 who allowed the appeal. Permission to appeal was sought by the Secretary of State who had it appears not attended on the hearing of the appeal on 19 January 2022.
3. Permission to appeal was given by First-tier Tribunal Judge Boyes on 4 May 2022 and I was told the substance of the appeal , with reference to Celik [2022] UKUT 00220, was the error in the Judge embarking upon the exercise of considering the nature of the relationship whereas the provisions of the Scheme and its requirements was clear: The appeal should have been dismissed and as a result the Appellant would have to make a fresh application raising Article 8 of the ECHR issue about his relationship with his partner.
4. Ms Ofei-Katia accepted, as she must, that the requirements of the Scheme were not met but essentially argued that the Judge did what he should have done, namely considered the relationship/its durability and on the basis of the conclusions of fact which he had decided concluded that the appeal should be allowed.
5. I regret to say that, as the law clarifies EUSS decisions, it was clear that there was a structure to the Scheme which was basically unequivocal and provided no general discretion to avoid the requirements of the EUSS nor was it contrary to the withdrawal agreement. Thus the Secretary of State's decision was in law correct in that the marriage had taken place after the relevant date. Ms Cunha argued that the outcome was that the appeal should have been dismissed and Mr Agyapong would have the opportunity to make further submissions and particularly address the

*Article 8 ECHR* issue which would give the Secretary of State an opportunity to consider the merits of a claim made on that basis.

6. Although it is regrettable that time and expense has been incurred in this way, the fact of the matter was that the requirements of the Scheme unless overturned in other courts will be shown to be the requirements that must be complied with. It has not been agreed that Article 8 ECHR can be considered by me. Sadly this leaves Mr Agyapong to a degree in limbo but on the evidence that was advanced, upon which I express no view, that plainly there may be merit in the Appellant seeking to make a fresh application.

### **NOTICE OF DECISION**

7. The First-tier Tribunal made a material error of law. The following decision is substituted. The appeal of Mr Agyapong is dismissed.
8. No anonymity direction is made.

### **FEE AWARD**

9. If a fee award was made by the First-tier Tribunal then in the light of the outcome of this appeal no fee award is appropriate.



Signed

Date

Deputy Upper Tribunal Judge Davey