



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002190
First-tier Tribunal No:
EA/14361/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BESMIR HOXA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

On the papers

DECISION AND REASONS

1. In a decision promulgated on 21 February 2022 First-tier Tribunal Judge O'Malley ('the Judge') allowed Mr Hoxa's appeal against refusal of his application for leave under Appendix EU of the Immigration Rules on the basis he was the spouse of an EEA national in the UK.
2. The application was refused as Mr Hoxa had failed to establish he was a spouse at the specified date of 11 PM 31 December 2020 as his marriage took place on 12 July 2021.
3. The Judge accepted that the Secretary of State was right to refuse the application by reference to Appendix EU as a spouse.
4. From [42] the Judge went on to consider what is described as an alternative application as an extended family members/durable partner but correctly noted Mr Hoxa did not make an application as a durable partner at all and therefore not before the specified date. Notwithstanding this fact, the Judge went on to allow the appeal on the basis the decision breached Mr Hoxa's rights under the EU Exit Regulations and Withdrawal Agreement.
5. Permission to appeal was sought by the Secretary of State and granted by another judge of the First-tier Tribunal.
6. The Upper Tribunal handed down its decision in Celik v Secretary of State the Home Department [2022] UKUT 00220 the application of which establishes the Judge erred in law in allowing the appeal as Mr Hoxa had never applied for his residence to be facilitated as an extended family member, as required under the Immigration (EEA) Regulations 2016, before the specified date.

7. The case was listed for an error of law hearing but stayed along with a number of similar cases is the decision in Celik had been appealed to the Court of Appeal. That Court handed down its decision on 31 July 2023 upholding the findings of the Upper Tribunal.
8. A request from Mr Hoxa's solicitors asking for this case to be further stayed pending an application for permission to appeal the decision of the Court of Appeal to the Supreme Court was refused, as though it is accepted that such application was made permission to appeal was refused by the Supreme Court on 24 January 2024.
9. In a document headed "Disposal Directions" dated 14 March 2024 from the Tribunal it is written at [25]-[27]:
 25. I find having reviewed the evidence, pleadings, and case law referred to above, that the Secretary of State has established that the Judge materially erred in law for the reasons set out in the application for permission to appeal and further submissions of 27 August 2023. The letter from the appellant's representatives, other than stating he believes the Judge had not erred in law, fails to grapple with the specific findings in relevant authorities setting out the proper interpretation of the Withdrawal Agreement which was the document considered by the Judge and the basis on which the Judge allowed the appeal.
 26. I am of the opinion that the only available outcome for this appeal is that the decision of the Judges is set aside, and the Upper Tribunal substitutes a decision to dismiss the appeal.
 27. As this decision is being made on the papers I consider it appropriate that the party should have the opportunity to comment upon this proposed outcome. I therefore direct that, no later than 4 PM 14 days from the date this decision is sent to them, any party disagreeing with my suggested outcome must write to the Upper Tribunal setting out their reasons why which must be supported by detailed proper reasoning, with reference to the judgements referred to above, for why they believe on the facts as found by the Judge, and the correct legal position, the above appellant is able to succeed. In relation to the appellant; repeating matters set out in the correspondence referred to above would not be sufficient as those arguments have already been considered and rejected. Any party who agrees with the proposed outcome need not respond as their silence will be taken as their consent.
10. That document was sent to the parties on 11 April 2024. There is no evidence that it was not properly served upon any party to the proceedings. It has not been returned as not having been served.
11. I have today had the matter referred back to me with confirmation from an officer of the Listing Team at Field House that they have not received any correspondence from either of the parties.
12. In light of the indication of the view that the only available outcome of the appeal is that the decision of the Judge is set aside and the Upper Tribunal substitutes a decision to dismiss the appeal, the provision of adequate time to enable a response to be made by any party to this proposal, and the failure of any party to respond in any manner, I consider it is in the interests of justice, the overriding objectives, and the principle of fairness, to determine the merits of the appeal on the papers and to make an order in terms of the indication provided to the parties.

Notice of Decision

13. I find the First-tier Tribunal has materially erred in law for the reasons set out in the Secretary of State's grounds seeking permission to appeal, the grant permission to appeal, and the Disposal Direction. I set that determination aside.
14. I substitute a decision to dismiss the appeal.

C J Hanson

Appeal Number: UI- 2022-002190

Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 July 2024