



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-
003337

First-tier Tribunal No: EA/13766/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
3rd January 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

NASEERUDDIN IBRAHIM BALA
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER
(Liverpool -173774)

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 19 December 2023

DECISION AND REASONS

1. In a determination promulgated on 24 March 2023 the above panel of the Upper Tribunal found material error of law in the decision of the First-tier Tribunal which had allowed the appellant's appeal against the refusal of his application for an EU Settlement Scheme (EUSS) Family Permit.
2. On that occasion the appellant's wife, Rubina Suleman ('the Sponsor') attended the hearing. Today there has been no attendance. We are satisfied that notice specifying the date, place, and time of the hearing has been properly served to the last known address for service by the Tribunal. There has been no explanation for the failure to attend, no application to adjourn, and nothing before us to warrant the hearing being put off of our own motion. In the circumstances we are satisfied, having regard to the overriding objective and interests of justice, that it is appropriate in all the circumstances to proceed in the absence of the Sponsor. The appellant is out of the UK and so cannot himself attend.
3. The appellant and Sponsor married on 18 January 2021.
4. The application was refused by the Entry Clearance Officer (ECO) as the date of the marriage was after 11 PM 31 December 2020 ('the specified date') and

- therefore the application could not succeed on the basis of being a family member of an EEA national exercising treaty rights in the UK under the EUSS.
5. The ECO considered whether the appellant was able to succeed on the basis of a durable partnership but noted the relationship had only commenced on 10 November 2020, one month prior to the specified date, and had not been in existence for the requisite minimum two year period required to establish a durable relationship, in addition to other issues set out in the refusal notice.
 6. It was found the First-tier Tribunal had erred in law as under the terms of the Withdrawal Agreement and the EUSS it was not clear how the appellant was able to succeed with his appeal. On that basis the earlier decision was set aside. When canvassing disposal the Sponsor indicated she had further evidence she wished to submit, and directions were therefore given for the evidence to be filed.
 7. A letter was received from the appellant dated 17 July 2023 in which he states he believed that even if he had applied again, the result would have come out in his favour in light of the civil registration of 18 January 2021.

Discussion and analysis

8. Although the appellant's marriage occurred on the date stated that was after the specified date. The Upper Tribunal in Celik v Secretary of State the Home Department (EU exit; marriage; human rights) [2022] UKUT 00220 found that for an individual to succeed their entry had to be facilitated prior to the specified date in the same manner as an application by an extended family member (EFM) would have had to have been facilitated under the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations'). It was also found that the terms of the Withdrawal Agreement did not, per se, assist an individual claiming leave as an EFM if their entry had not been facilitated.
9. That decision was upheld by the Court of Appeal in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921, judgement in which was handed down on 31 July 2023. That decision reinforced the finding of the Upper Tribunal that a person who did not marry an EU national until after the end of the transition period of 31 December 2020 did not have a right under the Withdrawal Agreement to reside in the United Kingdom or under the EUSS.
10. As noted, the Sponsor did not attend and so there was nothing more before us to establish the appellant's case. We have looked back at the details of the conversations by way of remote messages and the other information that we do have, but do not find that this is sufficient to establish the concerns of the ECO set out in the refusal notice are incorrect.
11. There was no "other significant evidence" provided to establish the existence of a durable relationship for the required period prior to the specified date. That we had was not sufficient.
12. The burden is upon the appellant to prove that he is entitled to the remedy he seeks. He has not done so. On that basis the only option open to us is to dismiss the appeal.

Notice of Decision

13. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 December 2023