



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2022-003474

First-tier Tribunal No:  
EA/14993/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 8 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Huzri Uka  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**REPRESENTATION**

For the Appellant: Ms R Arif, Senior Home Office Presenting Officer  
For the Respondent: Mr K Pullinger, Counsel on behalf of the appellant

**Heard at Birmingham Civil Justice Centre on 8 July 2024**

**DECISION AND REASONS**

**INTRODUCTION**

1. Although the appellant in the appeal before the Upper Tribunal is the Secretary of State for the Home Department, for ease of reference I continue to refer to the parties as they were before the First-tier Tribunal ("FtT"). Hereafter I refer to Mr Uka as the appellant and the Secretary of State as the respondent.

2. The appellant is a national of Albania. His appeal against the respondent's decision of 17 October 2021 to refuse his application for a residence card under the EU Settlement Scheme under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 was allowed by First-tier Tribunal Judge Anthony ("the judge") for reasons set out in a decision promulgated on 25 May 2022.
3. The judge noted the appellant made an application under the EU Settlement Scheme as the spouse of an EEA Citizen, Ms Nicoleta Lacramioara, a Romanian national, ("the sponsor"), an EEA national residing in the UK in exercise of her Treaty rights. The judge did not hear evidence from the appellant and the sponsor because the appellant's representative submitted there is no dispute regarding the genuineness of their relationship. The issue was said to be simply whether the decision breaches the general principles of EU law and whether it is in accordance with the Withdrawal Agreement.
4. The judge considered the evidence before the Tribunal and found the appellant was married to the sponsor on 3 July 2021 at the Registry Office in Mansfield. At paragraphs [20] and [21], the judge said:

"20. Having considered the evidence as a whole, I accept the appellant and the EEA citizen sponsor's evidence that they have been living together since October 2020. I find this is confirmed by the joint tenancy agreement of October 2020 and the Council tax bill. I accept and find from their evidence and the screenshots of communication with various registry offices that they did attempt to get married before the specified period but were unsuccessful because of the delays occasioned by the Covid19 pandemic.

21. I have placed weight on the fact they have since entered into a marriage on 3 July 2021. I observe there are further Council tax bills in joint names since the marriage. I find they have entered into a further joint tenancy for the property they live in. I have taken into consideration the various (undated) photographs provided of them together. Having considered the evidence as a whole, I find that their partnership was formed and "durable" prior to the specified date."
5. At paragraphs [35] and [36] of the decision, the judge concluded:

"35. However, because they chose to wait until they were married before making the application, and the marriage was delayed until after the specified date because of the pandemic, this has meant (according to the respondent's interpretation) the appellant cannot meet the requirements in the definition of 'family member of a relevant EEA citizen'. I have already found the appellant and the EEA citizen sponsor were in a durable relationship prior to the specified date; that they are now married; and that they are in a genuine and subsisting relationship. I find it would be disproportionate in my judgement to deny the appellant status under the Withdrawal Agreement because he waited until they were married before applying under the EUSS.

36. In conclusion, for the reasons set out above, I find the appellant does meet condition 1(a)(ii) of EU14. In the alternative, I also find the respondent's decision in this appeal breaches the terms of the Withdrawal Agreement."

## **GROUND OF APPEAL**

6. The respondent claims the judge made a material error of law in allowing the appeal for the reasons given. The respondent claims the appellant could not succeed as a spouse, as the marriage took place after the specified date (31 December 2020). Furthermore, the respondent claims the Withdrawal Agreement provides no applicable rights to a person in the appellant's circumstances and the appellant was not residing in the UK in accordance with EU law as of the specified date, as he had not had his residence as a 'durable partner' facilitated in accordance with national legislation (The Immigration (European Economic Area) Regulations 2016). The respondent claimed the appellant does not come within the personal scope of the Withdrawal Agreement. Accordingly, there was no entitlement to the full range of judicial redress including the Article 18(1)(r) requirement that the decision was proportionate.
7. Permission to appeal was granted by FtT Judge Haria on 1 July 2022.
8. The appeal was listed for hearing before me on 27 April 2023. Prior to that hearing, the appellant's representatives applied for an adjournment. On 26 April 2023, the Tribunal informed the parties that this appeal is stayed pending the decision of the Court of Appeal in *Halil Celik v SSHD* (CA-2022-002008). The parties were directed to file and serve a position statement setting out their respective positions as to the impact of the decision of the Court of Appeal on this appeal, and their proposals for the disposal or listing of this appeal in light of the decision of the Court of Appeal.
9. The judgement of the Court of appeal in *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921 was given on 31 July 2023. In response, the respondent confirmed the basis upon which the FtT judge had allowed this appeal has been disapproved by the Court of Appeal. The respondent maintained the judge erred in law by allowing the appeal for the reasons she gave and in light of the decision of the Court of Appeal, the respondent's appeal should be allowed and the decision of the FtT should be set aside.
10. In the absence of an agreed consent order disposing of the appeal, the appeal was listed for hearing before me.

## **THE HEARING OF THE APPEAL BEFORE ME**

11. Mr Pullinger attended the hearing before me and he conceded the decision of the FtT cannot stand and must be set aside. He, quite properly in my judgement, accepts that the development of the law in this area is such that the appellant's appeal against the respondent's decision of 17 October 2021 to refuse his application for a residence card under the EU Settlement Scheme cannot succeed.

## **DECISION**

12. The Court of Appeal held in *Celik v SSHD* [2023] EWCA Civ 921 that on the proper interpretation of Article 10 of the EU Withdrawal Agreement, a Turkish national who had married an EU national after the end of the post-EU exit transition period, did not have any right to reside in the UK. The fact that their marriage had been delayed due to the COVID-19 pandemic did not alter the interpretation of the Withdrawal Agreement.
13. Furthermore, in *Hani (EUSS durable partners: para (aaa))* [2024] UKUT 00068 (IAC) the Upper Tribunal held that the effect of paragraph (b)(ii)(bb) (aaa) of the definition of “durable partner” in Annex 1 of Appendix EU to the Immigration Rules, as inserted by Statement of Changes HC 813 (from 31 December 2020 to 11 April 2023), is that a person who was in a durable partnership but did not have a “relevant document”, and who did not otherwise have a lawful basis of stay in the United Kingdom at the “specified date” of 31 December 2020 at 11.00PM, is incapable of meeting the definition of “durable partner”.
14. The decision of First-tier Tribunal Judge Anthony to allow the appellant’s appeal for the reasons set out in her decision is vitiated by a material error of law and must be set aside.
15. As to disposal, in light of the decisions of the Court of Appeal in *Celik v SSHD* [2023] EWCA Civ 921, and the Upper Tribunal in *Hani (EUSS durable partners: para (aaa))* [2024] UKUT 00068 (IAC) it is unsurprising that Mr Pullinger concedes the appellant cannot succeed in the appeal.
16. It follows that I set aside the decision of FtT Judge Anthony promulgated on 25 May 2022 and remake the decision in the Upper Tribunal, dismissing the appellant’s appeal against the decision of 17 October 2021 to refuse his application for a residence card under the EU Settlement Scheme.

## **NOTICE OF DECISION**

17. The Decision of First-tier Tribunal Judge Anthony promulgated on 25 May 2022 is set aside.
18. The decision is remade in the Upper Tribunal and I dismiss the appeal by Mr Huzri Uka against the decision of the Secretary of State to refuse his application for a residence card under the EU Settlement Scheme.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**8 July 2024**

