IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005763

First-tier Tribunal No: EA/00009/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25th November 2024

Before

UPPER TRIBUNAL JUDGE LANE
UPPER TRIBUNAL JUDGE PINDER

Between

Secretary of State for the Home Department

Appellant

and

Bhupal Reddy Gangula
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Presenting Officer.
For the Respondent: Mr M Biggs, Counsel instructed by MTG Solicitors.

Heard at Field House on 11 September 2024

DECISION AND REASONS

1. The Secretary of State appeals with the permission of First-tier Tribunal Judge Hollings-Tennant granted on 18th November 2022 against the decision of First-tier Tribunal Judge Chamberlain. By her decision of 24th May 2022, Judge Chamberlain ('the Judge') allowed the Mr Gangula's appeal against the Respondent's decision to refuse him leave to remain under the EU Settlement Scheme ('EUSS').

2. We refer to the Secretary of State as the Respondent and to Mr Gangula as the Appellant, as they respectively appeared before the First-tier Tribunal.

Background

3. The Appellant is an Indian national, who married an EEA citizen ('the Sponsor') on 20th April 2021 and who applied to the Respondent for leave to remain under the EUSS. He had submitted that he had been in a durable relationship with his

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Sponsor since December 2019. The Appellant had previously entered the UK in 2010 as a student and following several extensions of leave to remain, his leave was extended until 30th October 2013. Thereafter, the Appellant remained in the UK without lawful leave to remain.

4. It was the Appellant's case that he became engaged with his Sponsor on 5th August 2020 and that he had submitted their notice of intention to marry on 7th October 2020. As a result of the public health restrictions caused by the Covid-19 pandemic, there was then a delay in their marriage ceremony taking place and this was eventually held on 20th April 2021.

5. On 5th April 2021, the Appellant submitted an application under the EU Settlement Scheme and this application was refused on 8th December 2021. The sole basis for the Respondent's refusal was that the Appellant had not provided sufficient evidence to confirm that he was the family member of a relevant EEA citizen prior to the specified date, namely 31st December 2020. This was because the Appellant's marriage certificate was dated 20th April 2021 and therefore post-dating the specified date. Neither had the Appellant provided any evidence to show that he met the definition of a 'durable partner' contained in Annex 1 of Appendix EU, namely evidence that he held a 'relevant document' or had applied for such a document prior to the specified date.

6. The Appellant appealed against that decision and his appeal was heard by the Judge on 10th May 2022. The Appellant was represented at that hearing by Mr Broachwalla, of Counsel and the Respondent was not represented. The Judge allowed the Appellant's appeal.

The Decision of the First-tier Tribunal Judge

7. At [13]-[14], the Judge accepted the Appellant's evidence that he had met the Sponsor in July 2019 and that following the Appellant's proposal in December 2019, they had started to cohabit in January 2020. The Judge also accepted that their planned marriage ceremony had been delayed as a result of the Covid-19 pandemic. She also found at [15] that despite them not living together prior to the specified date, there was other significant evidence of the Appellant's and his partner's durable relationship as at 31st December 2020. The Judge then went on to consider at [19]-[25] the relevant provisions of Appendix EU finding that the Appellant met the definition of a 'durable partner' and setting out her understanding of those provisions.

8. At [26]-[27], the Judge considered in the alternative that the Appellant had provided reasonable grounds for why the application was made after the deadline of 31st December 2020 with reference to Article 18(d) of the Withdrawal Agreement. The Judge ultimately found that the Respondent should have allowed the Appellant to submit his application as a spouse within a further reasonable period of time and consider this in accordance with Article 18(d).

The Appeal to the Upper Tribunal

9. Permission was granted by First-tier Tribunal Judge Hollings-Tennant, who considered that it was arguable that that the Judge had erred by misinterpreting the requirements of the definition of a durable partner contained in Annex 1 of Appendix EU and by failing to properly consider the provisions under the Withdrawal Agreement. The latter was as a result – the Respondent argued - of

the Appellant having no applicable rights under the Withdrawal Agreement due to his residence not having been facilitated in accordance with national legislation nor had he applied for such facilitation before the specified date. Judge Hollings-Tenant also referred to the authority of *Celik (EU exit; marriage; human rights)* [2022] UKUT 00220 (IAC), which had of course been published by the time of his decision on permission to appeal but had not been published at the time of the Judge's decision in May 2022.

10. Following the grant of permission to appeal to the Respondent, this appeal was stayed behind that of *Celik*, which was at that time progressing before the Court of Appeal. On 29th January 2024, directions were served on the parties in this appeal as a result of the Court of Appeal's judgement in *Celik*, handed down in July 2023. These directions invited the parties to consider their positions in light of that judgment and to specifically explore whether an agreement could be reached to dispose of the appeal once the Appellant, in particular, had properly reviewed his position as to whether he could resist the Secretary of State's appeal in this Tribunal. No response was received following the issuing of those directions.

11. On 10th June 2024, a further set of directions were issued by Judge Kamara, who expressed the provisional view that the grounds of appeal raised by the Respondent were bound to succeed in light of the *Celik* judgments. These directions also required the parties to consider their respective positions. On 25th August 2023, a skeleton argument was filed by the Respondent maintaining that the Judge's decision needed to be set aside following the Court of Appeal's judgment in *Celik* and for the Appellant's appeal to be remade and dismissed out-right. She submitted that there was no basis to distinguish the Appellant's case from that of *Cilic*.

12. No further correspondence was received from the Appellant and so, to avoid any further delay, the matter was listed for an error of law hearing before us on 11th September 2024.

13. It is appropriate at this juncture to record that on the day before the hearing before this panel, the Appellant made a number of applications to adjourn. It was submitted on his behalf by his solicitors that the Appellant had fallen ill, had been issued a certificate by his GP that he was unfit to work for a period of one week and that in light of this, it was not possible for the Appellant to attend the hearing. This request was refused on the basis that there was no evidence that the Appellant's solicitors could not properly represent the Appellant at the hearing, having obtained the Appellant's full instructions. With the hearing concerning in the first instance whether an error of law had been made by the Judge in the FtT, it was not necessary for the Appellant to also attend the hearing in person, particularly if he was unwell. In the end, the Appellant attended and was represented by Mr Biggs of Counsel, who confirmed that he was fully instructed and ready to proceed.

Submissions and Conclusions

14. As a result of the Court of Appeal's judgment in *Celik*, Mr Biggs very properly accepted that he could not defend the Judge's decision nor the proposition that the Appellant's appeal fell to be dismissed under the EU Settlement Immigration Rules and/or the Withdrawal Agreement. As we have already noted above, the Judge determined the Appellant's appeal in the FtT on 10th May 2022, which was

prior to the Upper Tribunal hearing the appeal of *Celik* and prior to the decision being promulgated and reported in the same appeal.

15. Mr Biggs instead requested us to adjourn the re-making of the Appellant's appeal so as to enable him to raise a new matter with the Respondent: a human rights claim to a private and family life under Article 8 ECHR. Mr Biggs made brief submissions setting out why we should accede to this request and Mr Tufan responded, also in brief terms, opposing such a course of action. Mr Tufan emphasized that it was the Respondent's policy not to grant consent for a new matter to be raised under Article 8 ECHR in EUSS appeals.

16. Following a careful consideration of the parties' respective submissions, we refused to adjourn the re-making of the Appellant's appeal. We communicated to both parties that we had taken the following issues into consideration when reaching our decision:

    (a) The Appellant accepted that he could not defend the Judge's decision following the Upper Tribunal's judgment in *Celik* and this being upheld by the Court of Appeal. His case effectively stood on all fours with that of Mr Celik;
    (b) The Respondent's policy to refuse to grant consent for new matters in the form of an Article 8 claim to be raised, adding to the futility of any adjournment of these proceedings;
    (c) The Appellant had not sought to respond in any way to the Tribunal's directions issued to him as briefly recorded above;
    (d) The Appellant had had ample time to raise a new matter with the Respondent, if he was minded to do so, since the publishing of the two judgments by the Upper Tribunal and the Court of Appeal in *Celik* in August 2022 and July 2023 respectively.

17. We are satisfied therefore that the Judge has materially erred in law having misdirected herself when considering the relevant definitions in Annex 1 to Appendix EU and in allowing the appeal finding a breach of the Appellant's rights under the Withdrawal Agreement, when in fact the Appellant was not within personal scope of that Agreement as subsequently clarified by the *Celik j*udgments. As a result, we set aside the Judge's decision to allow the appeal, pursuant to s.12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

18. The Appellant's appeal on the ground that the Respondent's decision breaches his rights under the Withdrawal Agreement and/or is not in accordance with the EU Settlement Immigration Rules is hereby dismissed.

Notice of Decision

19. The Respondent Secretary of State's appeal against Judge Chamberlain's decision is allowed and the decision of the First-tier Tribunal is set aside.

20. We have remade the decision. The Appellant Mr Gangula's appeal against the Respondent's decision of 8th December 2021 is dismissed.

Sarah Pinder

Judge of the Upper Tribunal

Immigration and Asylum Chamber

15 November 2024