IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000539
First tier number: EA/08614/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

HASEEN AKHTAR
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Not present or represented
For the Respondent: Ms Cunah, Senior Presenting Officer

Heard at Field House on 2 September 2024

DECISION AND REASONS

1. The appellant did not attend the initial hearing at Field House on 2 September 2024. I am satisfied that a notice of hearing had been served on 27 July 2024 on the appellant at the email address recorded on the Upper Tribunal file. In the circumstances, I decided to proceed with the hearing in the absence of the appellant considering that it was in the interests of justice to do so.

2. The appeal was dismissed by the First-tier Tribunal by reference to *Celik v SSHD [2023] EWCA Civ 921.* As the judge noted at [37], ‘ In *Celik* the Court of Appeal was considering the case of an unmarried person in a durable relationship with an EEA citizen, but who had not applied for facilitation of their presence on that basis under the 2016 Regulations, prior to 31 December 2020. It was concluded that such a person did not have any rights under the Withdrawal Agreement.’

3. The instant appeal differs from what may be described as a classic *Celik* situation in that the appellant claimed to have made an application to the respondent in July 2020 notwithstanding that the respondent had no record of it. Judge Seehof helpfully sets out the appellant's argument in the grant of permission:

   The Appellant's essential argument was that having made an application under the EEA Regulations he was entitled to the protection of the Withdrawal Agreement notwithstanding the fact that the Respondent could not find his application. At paragraph 7 of the grounds reliance is placed on the fact that the judge acknowledged that whilst finding against the Appellant; "I consider that the interpretation that the appellant suggests is one that would appear to 'push' the boundaries of what is required by the EUSS Scheme. Whilst that may well be appropriate, it seems to me that that is something that should be decided by a Court of Record." [49] The judge ruled that in order to have the protection of the Withdrawal Agreement, the Appellant would need to demonstrate not only that he had applied for facilitation of his residence, that application would have to have been granted. [50] Given the judge's acknowledgement this was an issue that a higher court should consider, I grant permission to appeal on this issue. The grounds maintain that the Appellant applied under the EEA Regulations, and that the Home Office provided incorrect information about this at paragraphs 8 and 9. The difficulties these grounds present is that the judge declined to make a finding as to whether the Appellant had made the application as alleged in September 2020 [66]. Whilst the challenge is not expressed as being a challenge to the judge's failure to make a finding, I do consider that it is arguable that the judge erred in his approach to this issue and grant permission to challenge the findings, or lack of findings as to whether an application was made.

4. The Secretary of State has filed a Rule 24 response (written by Mr Tan, Senior Presenting Officer) as follows:

   The A's counsel accepted that the A could not succeed under the EUSS rules.

   The FTTJ whilst not making a clear finding on whether the claimed 29 September 2020 application under the now defunct 2016 Regulations was made, did nonetheless determine appropriately that any such claim to fall within the remit of the Withdrawal Agreement with reference to Celik.

   The A claimed to have made a valid application under the EEA Regs, thus the burden remained on him to evidence that. The FTTJ comments on the evidence relating to the claimed application and the conflicting information held by the SSHD: that there was no evidence of such an application; and that the tracking reference related to another application and date. Beyond the mere assertion of the A of an application made and the tracking reference provided, the A would have to demonstrate that the purported application satisfied the requirements of Regulation 21 of the 2016

   Regulations.

   The claimed EEA Regulations application made 29/09/20 (AB58) provides what is said to be the application form as required under Regulation 21 of the 2016 EEA Regs. Within which the application attracts a fee of £65 (AB59), without payment of which the application is not complete or considered valid. There is

no evidence before the Tribunal that payment had been attempted or made such that the application- on the face of it was not valid.

Notwithstanding this, the A relied on a series of claimed SSE Southern Electric bills relating to 157 Bristol Road, E7 8QG dated from December 2014 to (AB33) December 2016 (AB40) bearing the name of his claimed cousin sponsor Muhammad Imtiaz. Yet the statement of Mr Imtiaz a French national states he did not come to the UK until 28 June 2017 (AB10).

Further the misspelling of September in the bill dated ’27 Septemeber 2015’ (AB35), and the remarkable ‘Personal Projection of costs for the next 12months’ being £1203.51 and remaining at that figure across a period of over 5 years (December 2014 to September 2020) as shown on the bills, calls into question the reliability of these documents. Similarly, the application form for Administrative Review (RB26 EA/00867/2023) details that the A only moved to the above address in July 2020.

The A provides 4 birth registration certificates claiming to establish relationship between A and sponsor (AB28-32). This is reflected in the claimed submitted evidence of 4 birth certificates in the alleged EEA Regulations application (AB135). However, the birth registration certificates at AB31-32 relating to the A, show an entry date of 05 November 2020 and issue date of 06 November 2020. It is inconceivable how the A could have relied on these birth certificates in an application claimed to have been made on 29 September 2020.

It is submitted that the evidence was unreliable, woefully short of establishing that a valid application had been made, and on the contrary undermined such a claim that the inevitable conclusion would have been for the Tribunal to dismiss the appeal.

5. I have read the documents very carefully, bearing in mind that the appellant is not present to make any submissions. I have to say that I am persuaded by Mr Tan’s Rule 24 letter, upon which Ms Cunah relied in her oral submissions. I do not find that the judge erred in law by not making any findings as to whether the appellant had ever made a valid application but, even if he did err, I find, for the reasons given in the Rule 24 letter, he would have been bound to find that no valid application had been made and would have dismissed the appeal.

Notice of Decision

The appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 30 November 202