



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER Case No: UI-2022-003831
First-tier Tribunal No: EA/01740/2022**

THE IMMIGRATION ACTS

**Heard at Field House
On the 29 November 2022**

**Decision & Reasons Promulgated
On the 31 January 2023**

Before

**UPPER TRIBUNAL JUDGE O'CALLAGHAN and
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

Between

**RIXHERS MANCELLARI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Physsas of counsel, instructed by Warren Grant Immigration

For the Respondent: Mr T Lindsey, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania whose date of birth is recorded as 27 July 1995. On 27 March 2021 he made application under the European Union Settlement Scheme ("EUSS") for

settled status on the basis of being the durable partner of Ms Catalina Alexandra Gesica Pop, a relevant European Economic Area (“EEA”) citizen being a Romanian national with pre-settled status in the United Kingdom.

2. On 29 January 2022, a decision was made to refuse the application on the basis that the Appellant did not meet the definition of a durable partner as set out in Annex 1 of Appendix EU to the Immigration Rules as he was unable to demonstrate that he was a joining member of his sponsor as claimed nor held a valid relevant document as required by the rules.
3. By Notice dated 9 February 2022, the Appellant appealed to the First-tier Tribunal. His appeal was heard by Judge Courtney sitting at Hatton Cross on 6 June 2022.
4. In dismissing the appeal, Judge Courtney set out the relevant provisions of the Scheme and then went on to determine the appeal that was before her.
5. Having set out the legal requirements that needed to be met by the Appellant if he were to succeed in the appeal the Judge made certain findings of fact:
 - (a) the Appellant and his sponsor had been in a committed relationship since April 2018 and so the Appellant met the definition of a durable partner in Annex 1 of Appendix EU;
 - (b) the Appellant did not meet the requirements of either (b)(i) or (b)(ii) in Annex 1 to the Rules; that is to say he did not hold a valid relevant document.
6. Judge Courtney records at paragraph 12 of her Determination and Reasons that there was no dispute that the requirements of either (b)(i) or (b)(ii) in Annex 1 were not met. What was argued, and again presented to us in the Skeleton Argument of Ms Physsas, was that whilst Judge Courtney applied the rules as drafted, the rules themselves were “arbitrary” and contrary to the “Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community” (“The Withdrawal Agreement”).
7. The actual grounds upon which the matter comes before us are more detailed, settled as they are by counsel, Ms C Physsas, but they are well summarised in the grant of permission.
8. On 6 July 2022 permission to appeal to the Upper Tribunal was granted by a Judge of the First-tier Tribunal thus the matter came before us.

9. By sheer coincidence on the very date that permission was granted the Upper Tribunal published guidance in the case of Çelik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC). The headnote to the guidance in that case reads:

“(1) A person (P) in a durable relationship in the United Kingdom with an EU citizen has as such no substantive rights under the EU Withdrawal Agreement, unless P’s entry and residence were being facilitated before 11pm GMT on 31 December 2020 or P had applied for such facilitation before that time.

(2) Where P has no such substantive right, P cannot invoke the concept of proportionality in Article 18.1(r) of the Withdrawal Agreement or the principle of fairness, in order to succeed in an appeal under the Immigration (Citizens’ Rights) (EU Exit) Regulations 2020 (“the 2020 Regulations”). That includes the situation where it is likely that P would have been able to secure a date to marry the EU citizen before the time mentioned in paragraph (1) above, but for the Covid-19 pandemic.

(3) Regulation 9(4) of the 2020 Regulations confers a power on the First-tier Tribunal to consider a human rights ground of appeal, subject to the prohibition imposed by regulation 9(5) upon the Tribunal considering a new matter without the consent of the Secretary of State.”

10. Ms Physsas rightly recognised, given the case of Çelik, that whilst we were not strictly bound by it, her arguments had been considered in that case which, importantly, was decided by a Presidential panel.
11. In those circumstances recognising that she would not succeed in the matter before us, (we indicated that we would follow the guidance in Çelik) Ms Physsas was content if we were to make clear that (a) the finding of fact that the Appellant was in a durable relationship was preserved; and (b) she had not conceded the appeal but rather sought to preserve the Appellant’s position, which we have duly noted.
12. At our invitation, Ms Physsas did not pursue matters further and was content for us not to set out in detail why the appeal would be dismissed given the guidance in Çelik, to which we have referred, and which we adopt as the reasoning for our dismissing this appeal.
13. We express our gratitude to Ms Physsas for the very proper, realistic, and professional approach that she took in the way she advanced the Appellant’s case before us.

DECISION

The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand.

A handwritten signature in black ink, consisting of stylized initials followed by a long horizontal flourish.

Signed:

Dated: 29 November 2022