



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

**Case No: UI-2022-003616  
First-tier Tribunal No:  
EA/02708/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 03 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**SSHD**

**and**

**Appellant**

**KELLY DEIVIRE RODRIGUEZ HERRADEZ**  
(no anonymity order)

**Respondent**

**Heard at Field House, London on 27 February 2023**

For the appellant: Mrs A Nolan, Senior Home Office Presenting Officer  
For the respondent: no appearance

**DECISION AND REASONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant is a citizen of Venezuela, born on 23 March 1983. On 11 February 2022, the respondent refused her application for an EUSS family permit, because her marriage to an EEA citizen (“the sponsor”) took place after the specified date of 31 December 2020, and she had not provided evidence of a “durable partnership” prior to that date.
3. The appellant appealed to the FtT and was content for her case to be dealt with “on the papers”.
4. In a decision promulgated on 8 July 2022, FtT Judge Nazir held that the appellant and sponsor tried to marry before the required date, but were unable to do so because of the situation with covid. The Judge referred to

article 18 of the Withdrawal Agreement, requiring there to be redress procedures for disproportionate decisions, and allowed the appeal.

5. The SSHD sought leave to appeal on the grounds that the appellant, not being directly related to the sponsor before the end of the transition period, was not within the scope of the Withdrawal Agreement and could not benefit from article 18.
6. FtT Judge Cartin granted permission, on the view that not having resided in the UK in accordance with the Withdrawal Agreement, the appellant could not benefit from its provisions.
7. The UT, in accordance with its usual practice, set the case down for a “face to face” hearing, and issued notice.
8. The appellant has replied to the grant of permission and to the notice of hearing, explaining her case, and asking for the decision of the FtT to be upheld.
9. In response to her request, the UT (exceptionally, in the case of an appellant who is abroad) arranged for the appellant to have a remote link to the hearing. However, she had not attended by 10.30 am, and the case proceeded in her absence. The fact that she was not present does not tend against her case.
10. As Mrs Nolan submitted, the point at issue has been settled by the case of *Batool and others* (other family members: EU exit) [2022] UKUT 00219 (IAC), which of course was not available to the FtT at the time of its decision.
11. In *Batool*, a panel comprising the President, Mr Justice Lane and UT Judge Lesley Smith held as follows:
  1. An extended (oka other) family member whose entry and residence was not being facilitated by the United Kingdom before 11pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020.
  2. Such a person has no right to have any application they have made for settlement as a family member treated as an application for facilitation and residence as an extended/other family member.
12. Mrs Nolan, fairly, did not ask the UT to remake the decision in this case by dismissing the appeal, as originally brought to the FtT. She pointed out that it remained to be considered whether the appellant might have succeeded by showing in the alternative that she and the sponsor had been in a durable partnership within the meaning of the rules. She asked for the case to be remitted to the FtT for a fresh decision.
13. I do not predict what the further outcome might be. That will depend on the case put by the parties to the FtT next time. It is also for the appellant

to decide how best to proceed, as there may be other routes available to her (although perhaps at greater administrative cost). All I can say is that I have some sympathy for her, as matters stand, as she appears to have proceeded in all good faith, and the matter has dragged on for quite a long time.

14. The decision of the FtT has erred in law, as above, in light of *Batool*. Its decision stands only as a record of what was before the tribunal. The case is remitted for a fresh decision, not to be listed before Judge Nazir.

Hugh Macleman

Judge of the Upper Tribunal, Immigration and Asylum Chamber  
27 February 2023