



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

**Case No: UI-2022-000190**  
**First-tier Tribunal Nos:**  
**EA/06816/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 01 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ALDO SHKOZA**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer  
For the Respondent: Mr H Ahmud, Counsel, instructed by Evolent Law

**Heard at Field House on 7 April 2022**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing on human rights grounds an appeal by the respondent, hereinafter “the claimant”, against a decision of the Secretary of State refusing him settled status under the EU Settlement Scheme.
2. Although Mr Deller was sheepish about the clarity of the refusal letter it does identify two fundamental problems in the claimant’s case. First, although the claimant applied as a “durable partner” of an EEA national exercising treaty rights, he failed in two important respects to meet the definition of durable partner. First, he relied on cohabitation of less than two years, where the definition requires cohabitation for two years, and second, he failed to have the

required document showing that he is the durable partner of the relevant EEA citizen.

3. In a way it is quite easy to see what the First-tier Tribunal had done but it is quite wrong. The First-tier Tribunal allowed the appeal on human rights grounds and the approach of the First-tier Tribunal Judge is consistent with such a decision. He decided that the appellant and partner were in a durable relationship and that, by the time the appeal was heard, two years cohabitation had or soon would be completed and that in the circumstances the substance of the rule was met so the appeal should be allowed.
4. Mr Deller was tactful but there is much wrong with the judge's approach. Fundamentally this is not a human rights appeal. It could not be allowed on human rights grounds. That option was not open to the Tribunal. The application was brought under the EU Settlement Scheme where the terms of the Regulations are paramount.
5. I note that the First-tier Tribunal heard the appeal in January 2022 when there was little experience of the approach to take with appeals of this kind. I have little doubt that the case would have been decided quite differently with the benefit of experience. Since hearing this appeal the decisions of this Tribunal in **Celik (EU exit; marriage; human rights) [2022] UKUT 220 (IAC)** and **Batool [2022] UKUT 219 (IAC)** had been promulgated. I have not reconvened the hearing to hear submissions from the parties on these cases. I make the decision on the information that was before me but it would be dishonest to pretend I was not aware of them and they must have guided me, if only subconsciously. Mr Deller submitted, I find rightly, that the appellant at best had been an extended family member who was just not within the scope of the Rule on which he purported to rely. There has not been two years' cohabitation at the time the application was made and he did not have proof of facilitation which was needed to be to satisfy the requirements of the Rules.
6. Mr Ahmud argued, correctly, that the term "durable relationship", unlike "durable partner", is not a defined term and there are other ways of showing there is a durable relationship apart from showing a durable partnership I follow that but it would be a hard task. Further, this is a case where a certificate of registration is required and could have been issued if it had been sought. It was not sought, either because it was not considered or because the applicant did not qualify. He was therefore outside the scope of the Rules.
7. I realise this is an unattractive decision for the appellant but I find that Mr Deller is right and it is a hopeless application.
8. **Notice of Decision**
9. The First-tier Tribunal erred in law. I allow the Secretary of State's appeal. I set aside its decision and I substitute a decision dismissing the appeal against the Secretary of State's decision.

**Jonathan Perkins**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**23 January 2023**