IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001205
First-tier Tribunal No: EA/07036/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

RONALDO UKA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, Counsel instructed by Kalam Solicitors
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 7 September 2022

DECISION AND REASONS

1. This is an appeal by a citizen of Albania on 11 April 2021 refusing his application under the EU Settlement Scheme.

2. The First-tier Tribunal dismissed the appeal. The appeal was heard on 3 December 2021 and the decision promulgated on 11 January 2022.

3. It is right to say that there was little experience in the Tribunal in dealing with this kind of appeal at that time and, unlike us, the First-tier Tribunal Judge did not have the benefit of the decision of this Tribunal in **Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC)** which was promulgated on 19 July 2002.

4. The first ground asserts that:

"The determination is arguably unclear, incoherent and difficult to follow."

5. Including the schedule, the First-tier Tribunal Decision and Reasons was written across 41 pages.

6. We see no need to make a direct response to this ground of appeal.

7. The second ground which is further particularised is that the First-tier Tribunal failed to apply relevant case law and failed to interpret Article 18 of the Withdrawal Agreement correctly, that is the third ground.

8. The present application was made on 27 February 2021 under the EU Settlement Scheme and after the United Kingdom had left the European Union. The appellant says in his statement that on 1 July 2020 his then solicitors submitted an EEA residence permit application but the application was rejected on 20 September 2020 as the Home Office could not take the fees from the bank card.

9. Certainly it may have made a considerable difference to the appellant's circumstances if that application had been made successfully but it was not made successfully. It is not undetermined; it was not made and the appellant can have no benefit from that in the decision that was made.

10. The refusal letter explained why the application had been refused. First, the applicant had not shown that he had a registration certificate or family permit or residence card under the EEA Regulations as a durable partner. Without that he could not possibly satisfy the requirements of the Rules. He simply did not meet the requirements for pre-settled status.

11. As is explained in **Celik**, there is no question of an argument based on proportionality. Whatever the true nature of appellant's relationship might be, as far as the application that was made was concerned it did not meet the requirement of the Rules and that is not fixed by any degree of cohabitation or intention and so it had to be refused and the appeal dismissed.

12. The points taken on his behalf might (we are certainly not making a ruling to this effect) form a basis of a claim for leave to remain on human rights grounds, which is something the appellant might want to consider if he has not already done so but, and with respect to Mr Karim's brief but pertinent submissions, the fact the appellant has a child does not change that.

13. In the circumstances and without considering anything more about the very long determination, we find the First-tier Tribunal reached the only conclusion that was open to it. If there is an error it is immaterial and we dismiss this appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 January 2023