



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-001144
EA/07153/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2022**

**Decision & Reasons Promulgated
On 15 February 2023**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE B KEITH**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RAMI MOHAMED MOHAMED METWALLY
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Collins, Counsel instructed by BMAP

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant appealed, against the decision of First-tier Tribunal Judge A M Black dated 7 February 2022 who dismissed the appellant's appeal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020. The appellant, a citizen of Egypt appealed against the decision of the Secretary of State dated 19 April 2021 refusing him pre-settled status under the EU Settlement Scheme as the family member of an EEA citizen under Appendix EU 14. The refusal stated that the appellant did not have the relevant evidence such as a marriage certificate prior to the specified

date in Annex 1 of Appendix EU (2300 GMT 31 December 2020). Nor did the Secretary of State consider that sufficient evidence had been provided to demonstrate the appellant was a “durable partner”. The appellant had made the application on 3 February 2021 under the EU Settlement Scheme (“EUSS”). He married his sponsor wife on 7 April 2021.

2. The Appellant pleads two grounds which in summary are:

Ground 1: that the FTT Judge failed to make a finding that Article 9(a)(ii) of the Withdrawal Agreement.

Ground 2: That the Respondent failed to follow her own Guidance

3. The grounds accepted however that the appellant did not meet a specific eligibility requirements of Appendix EU because he was not married prior to 31st December 2020.

4. As stated in the skeleton argument at §5 (emphasis added):

5. The basis of the Refusal is that the Appellant had not married by 23.00 GMT on 31st December 2020 or have a valid family permit or residence card issued as a result of which the Appellant did not meet the eligibility requirements of Appendix EU. That is correct but conspicuous by its absence is any consideration that the Appellant was unable through no fault of his own to marry his partner prior to 31st December 2020. The fact that the Appellant’s marriage, like so many others, was delayed as a direct result of the Covid-19 pandemic has been ignored by the Respondent.

The Hearing

5. At the hearing before us Mr Collins submitted that the Respondent had failed to consider the fact that the Appellant had not been able to marry prior to the 31st December 2020 because of the COVID-19 Pandemic. He accepted that the case of **Celik (EU exit, marriage, human rights) [2022] UKUT** was good law. He sought to preserve his position as it was submitted that case is being appealed. However, no submissions were made that **Celik** is bad law.

Analysis

6. The Upper Tribunal issued guidance on the application of the EU withdrawal agreement in **Celik (EU exit, marriage, human rights) [2022] UKUT 00220** as follows:

“(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".*

7. On the basis of the above, the appellant could not have succeeded. The appellant made his application under the EU Settlement Scheme not under the Immigration (European Economic Area) Regulations 2016 as a spouse or as a "durable partner". He married after the 'specified date'. As accepted in the grounds of appeal the appellant could not therefore fulfil the immigration rules under Appendix EU as he did not fall within the definition of 'family member' by the specified date.
8. **Celik** is good law and there is no indication of any grant of appeal on **Celik** to undermine that authority which was determined by a Presidential panel. We refuse, in the absence of good reason, therefore, to stay the appeal pending any further determination.
9. It was submitted in writing that the Home Office Guidance

"... introduced a concession under EUSS in terms of absences from the United Kingdom due to the Covid-19 pandemic indicating a more flexible approach to be taken in respect of absences caused as a result of the pandemic."
10. That issue is dealt with at paragraphs 61-63 of **Celik**. In that case, the Presidential panel specifically stated proportionality did not apply because the appellant did not fall within the personal scope of article 10 of the Withdrawal Agreement. That is the case here. In paragraph 63 of **Celik** the Upper Tribunal stated, '*By contrast, proportionality is highly unlikely to play any material role where, as here, the issue is whether the applicant falls within the scope of Article 18 at all*'.
11. The Secretary of State representative in submissions pointed out that the appellant did not have the relevant documentation as a dependant relative of an EEA citizen prior to the specified date. That is not in dispute.
12. We consider that the judge properly dealt with the issues before them and gave sound reasons for her findings that the appellant could not succeed

under Appendix EU as a family member, could not produce evidence he was in a durable relationship as set out in **Celik** and could not therefore avail himself of the Withdrawal Agreement. In effect the appellant cannot succeed on any basis.

13. We find no error in the decision of the First-tier Tribunal and the decision will stand.

14. For the reasons given above the appeal is dismissed.

Notice of decision

The decision of the First-tier Tribunal will stand and the appeal remains dismissed.

No anonymity direction is made.

Signed B Keith

Date

Deputy Upper Tribunal Judge Ben Keith

13 January 2023