Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001211
EA/08592/2021

THE IMMIGRATION ACTS

Heard at Field House
On 17th March 2022

Decision & Reasons Promulgated
On 3rd January 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARMANDO METAJ
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr P Turner instructed by Imperium Chambers
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed, with permission, against the decision of First-tier Tribunal Judge O'Garro who dismissed the appellant's appeal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020. The appellant, a citizen of Albania, appealed against the decision of the Secretary of State dated 28th 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 the marriage certificate prior to the

specified date in Annex 1 of Appendix EU (2300 GMT 31 December 2020). The appellant had made the application in March 2021 under the EU Settlement Scheme ("EUSS"). He married his sponsor wife on 2nd April 2021.

2. The grounds for permission to appeal asserted that

> (a) the judge failed to consider that the respondent adopted a restrictive approach in interpreting article 18 of the Withdrawal Agreement and the general principle of EU law
>
> (b) the judge failed to consider all factors in the appellant's case as to whether he met the requirements of Appendix EU and the immigration rules
>
> (c) the judge failed to have regard to the fact that the appellant had a genuine durable relationship which should have been considered in the light of the Withdrawal.

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. The grounds maintained however he had made enquiries of the local registry office and was prevented from marrying owing to Covid. The judge failed to consider this adequately. Further there was no specific guidance on 'significant evidence of the durable relationship'. The appellant did show sufficient evidence of a durable relationship (utility bills, council tax bills, bank statements and payslips) and it was argued that the judge had made an error in concluding there was insufficient evidence.

The Hearing

3. At the hearing before us Mr Turner reiterated his grounds submitting that the judge had not considered the Withdrawal Agreement.

4. Mr Melvin submitted in accordance with the Rule 24 notice that the grounds of appeal had no merit.

5. Following the hearing the Upper Tribunal invited submissions from the parties in relation to the promulgation of **Celik (EU exit, marriage, human rights) [2022] UKUT 00220.** We have considered the further submissions by the parties.

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. 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. Although it was submitted by Mr Turner that paragraphs 61-63 of **Celik** confirmed that the Withdrawal Agreement and the concept of proportionality could be invoked in this type of case, we consider that the facts of this appeal are essentially similar to those in **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. Reading on 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'*.

10. Mr Melvin in his 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.

11. We consider that the judge properly dealt with the issues before her 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.

12. The judge was entitled to find there was no durable relationship and gave sound reasons at [18]. She accepted that there was no guidance, noted the appellant and sponsor were married in February 2021, but found there was no evidence of any joint bank account or that the EEA sponsor was even on the tenancy agreement where they lived. It was open to the judge to proceed as she did and the weight to be given to the evidence is a matter for the judge. Even if the judge had found there was a durable relationship that could not have assisted the appellant because he had not facilitated his residence. As set out in **Batool and others(other family members: EU exit)** [2022] UKUT 2019 an extended family member whose entry was not being facilitated before 31st December 2020 and who had not applied for facilitation '*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 as an extended/other family member'*.

13. The Secretary of State's decision did not encompass any decision on human rights and the Secretary of State specifically refused to consent to have any human rights submissions determined.

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

15. For the reasons given above the challenge by Mr Metaj is dismissed.

Notice of decision

The decision of the First-tier Tribunal will stand and Mr Metaj's appeal remains dismissed.

No anonymity direction is made.

Signed Helen Rimington Date 30th November 2022

Upper Tribunal Judge Rimington