IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001194
First-tier Tribunal No:
EA/11484/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

INA CERKEZI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Claire, Counsel instructed by Osprey Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 17 August 2022

DECISION AND REASONS

1. This is an appeal by a citizen of Albania against the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent on 1 July 2021 refusing to issue her with Pre-Settled Status under Appendix EU (Family Permit) of the Immigration Rules.

2. The decision complained of was promulgated in early December 2021 and within three weeks of the hearing in November of that year. Since then, we have the benefit, at least in the sense that the law has been made clear, by a decision of this Tribunal reported as **Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC)**. This may not strictly bind me but I regard it as authoritative and insightful and I intend to adopt its reasoning.

3. The appellant's solicitors had prepared a skeleton argument for the hearing before me dated 16 August 2022. The respondent has produced a Rule 24 notice dated 25 July 2022 from "N. Willocks-Briscoe" which I have found particularly valuable.

4. This is a case where the appellant is married to her sponsor but the marriage did not take place until 16 April 2021 which was after the United Kingdom had left the European Union. The First-tier Tribunal, correctly, recognised there were two fundamental problems in the appellant's case on which the respondent relied. First, the parties had not married by the specified date, that is 31 December 2020 and additionally the appellant did not have a residence card as the sponsor's durable partner.

5. Both of these requirements had to be satisfied so that even if one of the omissions could be excused the appeal would still have to be dismissed. The grounds complain that the judge did not have proper regard for the fact that the marriage would have taken place within the required time if it had been permissible, but it was not because of COVID restrictions and, in any event, the judge did not consider the appellant's claim under Article 8 of the European Convention on Human Rights.

6. These points were argued fully in the Rule 24 notice and emphasised by Mr Claire before me.

7. The difficulty is that proportionality arguments of the kind relied upon here do not assist. As was explained in **Celik** and in the Rule 24 notice, proportionality is accessible to people who pass through the gateway created by Article 10. The appellant was not documented as required by Article 10(2) and had not made a valid successful application under the EEA Regulations 2016 and so there was nothing on which any issue of proportionality could bite.

8. It is further immaterial that the appellant may well have tried to or intended to marry within the required time. The appellant did not do that and is not qualified.

9. I also agree that Article 8 of the European Convention on Human Rights could only be raised as a separate issue with the consent of the Secretary of State and this was just not done. It follows that the judge was right and the arguments, although advanced firmly and thoughtfully, are incapable of succeeding.

10. I dismiss this appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 January 2023