



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

Appeal Number: UI-2022-002902
EA/13314/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 27 October 2022**

**Decision & Reasons Promulgated
On 3 January 2023**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**QAMAR-UL-ZUHA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan instructed by Addison & Khan Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan. He appealed to the First-tier Tribunal against the Secretary of State's decision of 26 August 2021 refusing an application for leave to remain on the basis of a durable relationship with his Romanian partner, under the EU settlement scheme.
2. The judge dismissed the appeal, concluding that though the appellant had shown that he was a durable partner of a relevant EEA citizen he did not have a relevant document showing him to be the durable partner of the relevant EEA citizen for the relevant period. He had not been previously

issued with a residence card as a durable partner prior to the relevant date and could not therefore take advantage of the Regulations as they applied to people in a durable relationship. The judge's understanding of the Rules regarding family members under EU11 and EU14 was that the family member of a relevant EEA citizen had to have documentation issued by the Home Office to confirm that he was in a durable relationship and that was absent in this case.

3. The judge therefore dismissed the appeal. He also considered Article 8 of the European Convention on Human Rights and found that a return of the appellant to Pakistan would not breach his Article 8 rights.
4. The appellant sought and was granted permission to appeal on the basis that the judge had erred in failing to consider the application under the Withdrawal Agreement, there had been procedural unfairness and the judge had erred in assessing Article 8 in failing to take account the procedural history in the case. Permission to appeal was granted on all grounds.
5. Mr Khan referred to the fact that after the decision the decisions of presidential panels in Celik [2022] UKUT 00220 (IAC), and Batool [2022] UKUT 00219 (IAC) had been promulgated. It appeared that they superseded the grounds in this case with regard to such matters as Article 18 of the Withdrawal Agreement. The reasoning in Celik in particular that there had been a refusal in October and a further application paralleled the facts in this case and the facts there had been found not to fit within Article 10.3. Nothing therefore could be added other than to say with reference to paragraph 62 in Celik that it could not be said that Article 18 sub-paragraph (r) had no application but that in the instant case there was no dispute as to the relevant facts. The appellant's residence as a durable partner had not been facilitated by the respondent before the end of the transitional period and he had not applied for such facilitation before the end of that period and therefore could not bring himself within the substance of Article 18.1. It was clear from what was said there that in such cases the proportionality argument had no material impact. All that could be said was with regard to Article 18(r) not having really being considered that although it was accepted there was no materiality to that, there was the question of whether it should have been considered.
6. In his submissions Mr Melvin relied on the skeleton argument that he had put in which covered the issues. He also argued that with regard to the Article 8 point, as set out in the skeleton, the appellant had not relied on Article 8 and no consent had been sought nor would it have been granted to consider it as a new matter. It was open to the appellant if he wished to claim that he should be allowed to remain in the United Kingdom and reliance on Article 8 to make the relevant application accompanied by the appropriate fee.

7. Mr Khan agreed that Article 8 had not been before the judge and it would have been a new matter and was not raised by either of the parties so the judge's findings on that should be overruled.
8. I reserved my decision.
9. I am grateful to the representatives for their helpful submissions. It is clear from what was said in particular in Celik but also in Batool that the appeal cannot succeed. There is no materiality to the failure by the judge to consider the Withdrawal Agreement bearing in mind what was said about that in Celik in particular. Mr Khan rightly raises the point that, as was said at paragraph 62 in Celik, the argument that Article 18.1(r) had no application went too far, nevertheless as in the instant case the appellant's residence as a durable partner was not facilitated by the respondent before the end of the transitional period. He had not applied for such facilitation before the end of that period and as a consequence could not bring himself within the substance of Article 18.1.
10. Accordingly there is no materiality to the failure to refer to the Withdrawal Agreement and in light of the subsequent decisions of the Upper Tribunal the grounds fall away.
11. I agree that the judge's findings on Article 8 require to be set aside however. The issue was not before him, permission had not been granted by the Secretary of State to consider Article 8 as a new matter and the opportunity to raise Article 8 matters remains for the appellant if he should wish to do so as set out at paragraph 23 of the Secretary of State's skeleton argument in this case.
12. Subject to that there is no error of law in the judge's decision and as a consequence the appeal against that decision is dismissed.

No anonymity direction is made.



Signed

Date 16th November 2022

Upper Tribunal Judge Allen