



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2022-002891**  
**First-tier Tribunal No:**  
**EA/14277/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 26 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**SUKHWINDER SINGH**  
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Rehman instructed by Lawfare Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**Heard at Field House on 19 January 2023**

**DECISION AND REASONS**

- 1.** The appellant appealed, with permission, against the decision of First-tier Tribunal Judge Shand (“the judge”) who dismissed the appellant’s appeal under the Immigration Citizens’ Rights Appeals (EU Exit) Regulations 2020 on 11<sup>th</sup> April 2022. The appellant, a citizen of India born on 15<sup>th</sup> May 1994 appealed against the decision of the Secretary of State dated 24<sup>th</sup> September 2022 refusing him pre-settled/settled status under the EU Settlement Scheme as the family member of an EEA citizen under

Appendix EU paragraphs 11 and 14. The refusal stated that the appellant did not provide the relevant evidence to qualify as a durable partner. He did not meet the requirements for settled or pre-settled status. The appellant had made the application on 15<sup>th</sup> June 2021 under the EU Settlement Scheme (“EUSS”).

- 2.** The grounds for permission to appeal asserted that
- (i) the judge erroneously concluded the appellant did not meet the definition of a durable partner in Annex 1 to Appendix EU
  - (ii) the judge failed to consider the respondent had a duty to facilitate the appellant’s rights and his residence here and thus a breach of the rights under the Withdrawal Agreement.
  - (iii) the judge failed to find that the requirement to have ‘legal status’ was incompatible with the Withdrawal Agreement.
  - (iv) the judge erred in finding there was no evidence that the sponsor would leave the UK if the appellant was removed.

Permission was granted on 19<sup>th</sup> May 2022, but only in relation to grounds (i) and (iv). In relation to ground (i) it was arguable that the judge erred in an assessment of ‘durable relationship’ on the basis that if the judge had found such a relationship the appellant may have succeeded on the basis of b(ii) of the ‘durable partner’ definition in Annex 1 of Appendix EU without holding a relevant document.

Ground (ii) was said to be unparticularised and overly focused on the EEA Regulations. In relation to ground (iii) the preamble and elsewhere made specific reference to those who had exercised free movement rights before 31<sup>st</sup> December 2020 (“the specified date”).

### ***The Hearing***

- 3.** At the hearing before me Mr Rehman pointed to evidence in the statement of the sponsor which underlined her attachment to the appellant. He submitted that the quality of the relationship with the sponsor had not been challenged by the respondent only the requirements under Appendix EU. The sponsor had not been asked about whether she would leave and that was unfair. The only reason the appellant could not comply with the requirements of Appendix EU was because he did not have the requisite documentation. The written submissions stated that the Immigration (European Economic Area) Regulations 2016 did not require an extended family member to have legal status to apply for an EU residence card and therefore Appendix EU was incompatible with the Withdrawal Agreement.

### ***Analysis***

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

5. **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.
6. In relation to ground (i), the judge described the relationship of the appellant and sponsor at [19] and did not specifically reject the durable relationship having identified that they started living together in October 2019 , went through a religious ceremony in September 2020 and attended a registry office to give notice of marriage on 1<sup>st</sup> December 2021 but were unable to complete the process because the sponsor did not have here original passport. The judge made no finding in my view at this point that there was no relationship. The statement ‘I am unable to find that his relationship with the sponsor has the quality of durability’ was made on the basis that he did not have a relevant document as a durable partner falling within the definition of ‘durable partner’ in Annex 2 to Appendix EU [20].
7. As Mr Rehman indicated the essence of the relationship did not appear to be contested in the refusal letter of the respondent. The conclusion drawn at [21] that there was no durable relationship because the appellant had not stated that she would leave with the appellant if removed, appeared not to be based on anything put to the appellant or sponsor, and is not sustainable.
8. That said, any error was not material because the judge qualified his finding at [22] by stating

*'In any event even if the appellant and sponsor were as at 31<sup>st</sup> December 2020, in a relationship which at that time had the quality of durability, the appellant nonetheless cannot meet the definition of a durable partner in Annex 1 to Appendix EU. That is because it is not disputed but he did not, on the one hand, hold a relevant document as the durable partner of a relevant EEA citizen within the meaning of annex 1 to Appendix EU and, on the other hand, he has not had a lawful basis of stay in the UK and islands since his visa expired in either 2010 or 2011'.*

9. 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 or made any such timely request. 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 31<sup>st</sup> 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'*.
10. Although only b(i) and not b(ii) in relation to the definition of 'durable partner' in Annex 1 of Appendix EU was argued in Celik, Mr Rehman confirmed that the appellant did not have any lawful basis to remain in the UK prior to the specified date. Thus, the appellant could not have succeeded under b(ii) either. The appellant made his application under the EU Settlement Scheme not under the Immigration (European Economic Area) Regulations 2016. The appellant could not therefore fulfil the immigration rules under Appendix EU as he did not fall within the definition of 'durable partner' by the specified date. 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.
11. Save for my observations above, in relation to the requirements under Appendix EU, 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, and 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. I find no error in the decision of the First-tier Tribunal and the decision will stand.
13. For the reasons given above the challenge by the appellant 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 Helen Rimington

Date 23<sup>rd</sup> January 2023

Upper Tribunal Judge Rimington