



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002909
First-tier Tribunal No:
EA/16412/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 9 November 2022

Decision & Reasons Promulgated
On the 08 February 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

GURPREET SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Dar of Trojan Solicitors

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 20 April 2022 of First-tier Tribunal Judge Hyland which refused the appellant's appeal against the respondent's decision dated 23 November 2021 which refused leave under Appendix EU of the Immigration Rules.

2. The appellant is a national of India and was born on 16 September 1986. He met his Italian partner in September 2018 and moved in with her in December 2018.
3. On 31 December 2020 the appellant attempted to make a paper application to be recognised as being in a durable relationship with his Italian partner in line with Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (the EEA regulations). He attempted to lodge that application at the Home Office in person but was advised that such an application had to be made online.
4. The appellant did not make an application of any nature until 26 May 2021 when he applied under Appendix EU. The respondent refused that application on 23 November 2021. The appeal came before Judge Hyland on 6 April 2022. As above, in the decision issued on 20 April 2022 the appeal was refused.
5. By the time of the hearing before Judge Hyland the appellant had married his EEA national partner. Judge Hyland accepted the couple's evidence as to the history of their relationship and accepted that the relationship was genuine; see paragraph 19 of Judge Hyland's decision.
6. The appeal was still refused, however. In essence, First-tier Tribunal Judge Hyland refused the appellant's appeal for the reasons set out by the Presidential Panel in the case of Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC). The appellant could not show that prior to 31 December 2020 his residence in the UK was being facilitated by the respondent under national legislation; see paragraph 52 of Celik. He did not have an outstanding application as of 31 December 2020 identified in paragraph 52 of Celik as potentially being able to amount to residence being facilitated under national legislation.
7. The appellant's grounds of appeal were drafted before the learning of the Presidential panel in Celik was handed down. The grounds as originally drafted cannot be criticised for failing to address the issues in Celik, therefore. It remains the case, however, that, following Celik, the First-tier Tribunal was correct to find that the appeal could not succeed. The appellant does not benefit from the principles contained in Article 18 of the Withdrawal Agreement; see paragraphs 64 to 66 of Celik. I therefore did not find that the appellant could benefit from Article 18(d) of the Withdrawal Agreement as suggested by Mr Dar at the hearing.
8. For these reasons, I did not find the decision of the First-tier Tribunal disclosed an error on a point of law and the decision is upheld.

Decision

9. The decision of the First-tier Tribunal does not disclose an error and shall stand.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 24 November 2022