IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002860

First-tier Tribunal No: EA/14436/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 February 2025

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JULIA ALVES AUGUSTO
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms Kogulathas, instructed by Mentor Legal LLP

Heard at Field House on 27 January 2025

DECISION AND REASONS

1. The Secretary of State is appealing against a decision of Judge of the First-tier Tribunal Dixon (“the judge”) promulgated on 18 March 2022. The judge allowed an appeal by Ms Augusto (“the claimant”) under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020. The claimant’s appeal was against a decision by the respondent of 4 May 2021 (“the SSHD Decision”).

2. In the SSHD Decision, the Secretary of State decided that the claimant did not meet the requirements for a grant of leave under the EU Settlement Scheme because she had applied as a dependent relative of an EEA citizen but did not have a valid registration certificate, family permit or residence card issued under the EEA Regulations.

3. The judge allowed the appeal on the basis that it was disproportionate under the Withdrawal Agreement to refuse the application on this basis that the claimant did not have a document issued pursuant to the EEA Regulations.

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4. Although at the time the judge decided the appeal there was some uncertainty as to the scope of the Withdrawal Agreement, that is no longer the case in the light of the authoritative Court of Appeal case addressing this: *Celik v SSHD* [2023] EWCA Civ 921. As accepted by Ms Kogulathas, the judge erred by adopting an approach to the EU Withdrawal Agreement that is inconsistent with *Celik*.

5. *Celik* makes clear that a person in the claimant's circumstances could only be within the scope of the EU Withdrawal Agreement if their entry and residence was being facilitated by the UK prior to 31 December 2020 or they had applied for facilitation of entry and residence before that date. As the claimant's residence was not being facilitated and an application for such had not been made, she was outside the scope of the Withdrawal Agreement. It was therefore an error of law to find that the claimant could benefit from the Withdrawal Agreement. Moreover, the only outcome open to the judge was to dismiss the claimant's appeal under the 2020 Regulations.

6. Ms Kogulathas noted the claimant's close family connections in the UK and submitted that it would be disproportionate for her to not be granted leave. Such arguments are open to the claimant in a human rights claim (arguing that removal would disproportionately interfere with her private and family life in the UK and therefore breach Article 8 ECHR), but do not fall within the scope of the appeal available to her under the 2020 Regulations. To raise these arguments in this appeal, she would need the consent of the Secretary of State (see section 9(5) of the 2020 Regulations) and Mr Tufan stated that consent had not been given. The claimant may wish to consider what is said in para. 98 of the Upper Tribunal decision in *Celik*:

> "As the respondent submits, if the appellant now wishes to claim that he should be permitted to remain in the United Kingdom in reliance on Article 8, he can and should make the relevant application, accompanied by the appropriate fee."

Notice of Decision

7. The decision of the First-tier Tribunal is set aside. I re-make the decision by dismissing the claimant's appeal.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 February 2025