



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

Case No: UI-2022-005377

First-tier Tribunal No: EA/02796/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 16 January 2025**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SHABIR ADIL**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer  
For the Respondent: No attendance

**Heard at Field House on 21 May 2024**

**DECISION AND REASONS**

1. I shall refer to the Respondent as the Appellant as he was before the First-tier Tribunal.
2. The Appellant is a citizen of Pakistan and his date of birth is 20 June 1988.
3. The Appellant did not attend the hearing before me. I was satisfied that a notice of hearing had been sent to him. It was in the interest of justice to proceed in his absence with regard to the overriding objective ( Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008)).
4. On 30 September 2022 the First-tier Tribunal (Judge Athwal) granted permission to the SSHD to appeal against the decision of the First-tier Tribunal (Judge Coutts) to allow the Appellant's appeal against the decision of the SSHD to refuse to grant him permanent residence in response to his application on 17 November 2021 under the Immigration Rules, Appendix EU.

5. The application by the Appellant was made on the basis that he is a durable partner of an EEA national, Viktoria Eva Erdie, a citizen of Hungary. The application was refused by the SSHD because he did not have a valid family permit or a residence card issued under the Immigration (European Economic Area) Regulations 2016 (the “2016 Regulations”).
6. The Appellant appealed under Regulation 3 of the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 (“the EU Exit Regulations”), which sets out the appeals framework. The grounds of appeal were that the decision breaches the Appellant’s rights under the withdrawal agreement and the decision was not in accordance with the provisions of the Immigration Rules (the Appellant did not pursue the latter at the hearing before the First -tier Tribunal).
7. The evidence was that the Appellant and his now wife wanted to register their marriage in November 2020 but could not do so because of the Covid pandemic. They married in May 2021. The judge focused on the durability of the relationship whilst the Reasons for Refusal Letter did not take issue with this. The Presenting Officer at the hearing before the First -tier Tribunal raised this as a contested issue at the hearing without having made a formal application to amend the grounds. The judge refused to allow the SSHD to amend the grounds. The judge heard evidence from the Appellant and the Sponsor. There was no re-examination. It was agreed that the application was made after 31 December 2020 and the Appellant conceded that he did not meet the requirements of the Immigration Rules under Appendix EU, however he relied on Article 18 of the withdrawal agreement and the Respondent’s guidance.
8. After a lengthy analysis of the law, the judge allowed the appeal under the withdrawal agreement having accepted the Appellant’s submissions.
9. The grounds of appeal claim that the judge focused on the durability of the relationship which was not material and erred in transposing Article 3 of the 2004 Directive when the Appellant was not in scope of the withdrawal agreement. The Appellant’s entry and residence had not been facilitated.
10. The hearing before the First-tier Tribunal and the grounds predate Celik (EU exit, marriage, human rights) [2022] UKUT 00220, the headnote of which reads 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”.

11. On the facts of this case the Appellant cannot succeed in his appeal because his entry and residence were not facilitated before 11 p.m. GMT on 31 December 2020.
12. I set aside the decision of the First-tier Tribunal to allow the Appellant’s appeal and re-make the appeal.
13. The appeal is dismissed.

**Joanna McWilliam**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

28 May 2024