



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003692
First-tier Tribunal No:
EA/00625/2022

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 15 November 2022

Decision & Reasons Promulgated
On the 06 February 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JUPINDERJIT SINGH GHOTRA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

1. We shall refer to the Respondent as the Appellant as he was known before the First-tier Tribunal. The Appellant is a citizen of India and his date of birth is 15 November 1993. Permission was granted to the Secretary of State by the First-tier Tribunal (Judge R Chowdhury) to appeal against the

decision of the First-tier Tribunal (Judge Sweet) to allow the Appellant's appeal against the decision of the Secretary of State on 21 December 2021 to refuse his application under the EU settlement scheme (EUSS).

2. The matter came before us to determine whether the First-tier Tribunal made an error of law. At the hearing there was no attendance by the Appellant or representatives. We were satisfied that a notice of the hearing had been issued by the Tribunal to the Appellant's solicitors via two email addresses. Indeed the solicitors had submitted a Rule 24 response. The email addresses shown on the solicitors' headed notepaper accord with the email addresses that the Tribunal used to send the notice of hearing. The clerk attempted to contact the solicitors, but this was not successful. In the circumstances we decided to proceed to hear the matter in the Appellant's absence.
3. The First-tier Tribunal heard evidence from the Appellant and his wife. The Appellant was married to an Italian national exercising Treaty rights in the UK in a Sikh customary marriage ceremony on 16 June 2019. They intended to marry before the end of December 2020 but were prevented from doing so as a result of COVID -19 and the regulations that ensued. They were married on 14 August 2021. The judge was satisfied that the Appellant and his wife were in a durable relationship at the relevant time. The judge identified as an issue whether the parties were in a durable relationship by the relevant date and said he was satisfied that they were. He accepted the Appellant and the Sponsor's evidence. With reference to the Respondent's "guidance" (which is not identified) the judge stated: .

"[the guidance] states that if a person was the unmarried durable partner and did not have a relevant document, they would need to show evidence of their relationship to their unmarried durable partner, that the relationship existed by 31 December 2020, and the relationship continued to exist on the date that he made his application."
4. The judge found that the Appellant meets the requirements of the guidance. The judge found in the alternative that the Appellant met the applicable test as a family member and a durable partner as set out in the Citizens Rights Directive. He said that Article 18(r) of the Withdrawal Agreement required a proportionality assessment. The judge concluded at [13] that he was satisfied that the Appellant met the requirements of the EUSS and that he should be issued with pre-settled status under EU14.
5. The grounds of appeal argue that the Appellant could not meet the Rules in accordance with Appendix EU with reference to Annex 1 because the Appellant did not have a relevant document. The issue whether the Appellant and Sponsor were in a durable relationship prior to the relevant date was not relevant to the appeal and that the judge further erred in finding that the Withdrawal Agreement applied.
6. We did not find it necessary to hear submissions from Ms Everett.

Error of Law

7. This was a decision under the EUSS and the Appellant exercised his right of appeal under Regulation 3 of the Immigration (Citizens' Rights Appeals) EU Exit Regulations 2020.
8. The recently reported decision in Celik EU exit; marriage; human rights [2022] UKUT 00220 is relevant to the appeal. The headnote 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.”*
9. The Appellant’s case is on all fours with the Appellant in Celik. But for the pandemic and COVID- 19 regulations he would have married the Sponsor before the relevant date. This Appellant cannot meet the requirements of Appendix EU as he did not have a relevant document (his residence was not being facilitated before the relevant date). In respect of the Withdrawal Agreement the Appellant is not within scope. It was not open to the judge to allow the appeal.
10. In relation to the guidance referred to by the judge this is likely to be a reference to the guidance quoted in the Appellant’s representative’s skeleton argument which relates to qualifying periods of residence affected by COVID-19 and does not have any material relevant to the decision before the judge.
11. For the above reasons we set aside the decision of the First-tier Tribunal to allow the appeal.

12. Ms Everett did not have any submissions to make in relation to the remaking of the appeal. We remake the appeal and dismiss it. It was not open to the judge to allow the appeal following Celik.
13. The appeal is dismissed under the Immigration Rules (Appendix EU)

No anonymity direction is made.

Signed Joanna McWilliam
2022

Date 29 November

Upper Tribunal Judge McWilliam