



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-002599  
EA/11982/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 October 2022  
Extempore decision**

**Decision & Reasons Promulgated  
On 29 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**BUJAR JATA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Mr J Collins, Counsel instructed by Sentinel Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of Judge of the First-tier Tribunal Shiner (“the judge”) promulgated on 7 March 2022. The factual matrix is not in dispute. In summary:
  - (a) The appellant is a citizen of Albania.
  - (b) In 2015 he entered the UK unlawfully.

- (c) In 2020 he met and entered into a relationship with an EEA national with whom he has resided since July 2020. They decided to marry in around September 2020 but were unable to obtain a date for the marriage until 2021.
  - (d) On 28 April 2021 the appellant applied for leave under the EU Settlement Scheme.
  - (e) On 5 June 2021 the appellant and his partner married.
  - (f) On 23 July 2021 the application was refused (“the SSHD decision”).
2. Two reasons were given in the SSHD decision for refusing the appellant’s application. First, the appellant was not a spouse of an EEA national on 31 December 2020. Second, the appellant had not been issued with a family permit or residence card under the EEA Regulations and therefore was not entitled to a grant of leave under the EU Settlement Scheme on the basis of being a durable partner of an EEA national.
3. The appellant appealed against the SSHD decision pursuant to the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 (“the Regulations”).
4. The grounds of appeal available to the appellant are set out in Regulation 8 of the Regulations. These provide:

Grounds of appeal

- (1) An appeal under these Regulations must be brought on one or both of the following two grounds.
- (2) The first ground of appeal is that the decision breaches any right which the appellant has by virtue of—
  - (a) Chapter 1, or Article 24(2), 24(3), 25(2) or 25(3) of Chapter 2 , of Title II , or Article 32(1)(b) of Title III, of Part 2 of the withdrawal Agreement,
  - (b) Chapter 1, or Article 23(2), 23(3), 24(2) or 24(3)], of Title II, or Article 31(1)(b) of Title III, of Part 2 of the EEA EFTA separation Agreement, or
  - (c) Part 2, or Article 26a(1)(b), of the Swiss citizens' rights agreement.
- (3) The second ground of appeal is that—
  - (a) where the decision is mentioned in regulation 3(1)(a) or (b) or 5, it is not in accordance with the provision of the immigration rules by virtue of which it was made;
  - (b) where the decision is mentioned in regulation 3(1)(c) or (d), it is not in accordance with residence scheme immigration rules;

(c) where the decision is mentioned in regulation 4, it is not in accordance with section 76(1) or (2) of the 2002 Act (as the case may be);

(d) where the decision is mentioned in regulation 6, it is not in accordance with section 3(5) or (6) of the 1971 Act (as the case may be)

5. The appeal came before the judge. At the First-tier Tribunal hearing it was common ground that the appellant could not succeed under the Immigration Rules as he did not have, and had not applied for, a permit or residence card prior to 31 December 2020.
6. The appellant argued that the SSHD decision breached his rights under the Withdrawal Agreement. The judge refused to consider this argument on the basis that the SSHD decision was concerned only with the Immigration Rules and did not address the Withdrawal Agreement. The judge found, with reference to Regulation 9(5) of the Regulations, that the appellant's argument relating to the Withdrawal Agreement was a "new matter" which could not be considered without the respondent's consent.
7. The grounds of appeal argue that the judge erred by finding that it was not open to the appellant to argue that the SSHD decision breached the Withdrawal Agreement when the wording of Regulation 8 of the Regulations makes it plain that an appeal can be brought on this ground.
8. At the hearing I put to Mr Collins the question of whether any error would be immaterial in the light of the recent Upper Tribunal decision *Celik (EU exit, marriage, human rights)* [2022] UKUT 00220 IAC. In that decision the President of the Upper Tribunal made clear that a person in a durable relationship in the UK with an EU citizen does not have substantive rights under the Withdrawal Agreement unless that person's entry and residence was being facilitated before 31 December 2020 or an application for facilitation had been made before that date. It is common ground that in this case an application for facilitation had not been made.
9. Mr Collins accepted that if *Celik* is correctly decided the appellant cannot succeed. However, he argued that *Celik* is not correctly decided as it is too restrictive in respect of its analysis of proportionality and public law. He noted that the case is now before the Court of Appeal with a pending application for permission to appeal.
10. After hearing from Mr Collins I informed Mr Melvin that I would not need to hear from him.
11. I agree that the judge fell into error by not considering whether the SSHD decision breached the Withdrawal Agreement as it is plain from the wording of Regulation 8(2) that this ground of appeal was available to the appellant. However, the error is immaterial because had the judge considered the Withdrawal Agreement the only conclusion he could have reached was that the SSHD decision did not breach it, for the reasons

given in *Celik*. As acknowledged by Mr Collins, for me to allow this appeal I would have to reach a different view on the Withdrawal Agreement to that in *Celik*. I am not prepared to do this because I consider *Celik* to be a well-reasoned and persuasive decision.

12. Accordingly, the appeal is dismissed.

**Notice of Decision**

13. The decision of the First-tier Tribunal is not set aside and the appeal is dismissed.

Signed

D. Sheridan  
Upper Tribunal Judge Sheridan

Dated: 24 October 2022