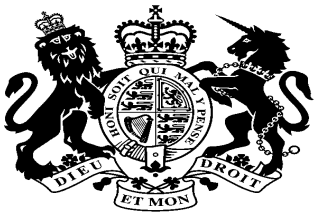

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-003190**

EA/14791/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 8 November 2022	**On 23 December 2022**

Before

Upper Tribunal Judge NORTON-TAYLOR
Deputy Upper Tribunal Judge MANUELL

Between

Mr ARDIT ALIA
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

DECISION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge Evans on 7 May 2022 against the decision to dismiss the Appellant's appeal made by First-tier Tribunal Judge Buckwell in a decision and reasons

promulgated on 10 March 2022. The Appellant had applied under for pre-settled status under Appendix EU claiming to be the durable partner of a relevant EEA citizen. The judge found that he was a durable partner as there was sufficient evidence to substantiate the relationship although it had not yet lasted two years, but the Appellant could not meet the definition of durable partnership within Appendix EU because he did not have a specified document. The judge found that there was no breach of the Withdrawal Agreement.

2. The Appellant is a national of Albania, born on 28 March 1996. He entered the United Kingdom in 2017. He applied for pre-settled status under the EUSS on the basis that he was the durable partner of Ms Andrea-Stefania Vaslu, ("Ms Vaslu") a citizen of Romania who was born on 20 August 1997. The Appellant and Ms Vaslu claimed that had been durable partners since April 2019. They married in the United Kingdom on 5 July 2021. The Appellant's EUSS application was refused on 4 October 2021.

3. It was accepted at the First-tier Tribunal appeal hearing on the Appellant's behalf that he was unable to meet Appendix EU of the Immigration Rules, but it was contended that he had rights under the Withdrawal Agreement which took precedence over the Immigration Rules and that the refusal was disproportionate.

4. Permission to appeal was granted because in summary it was considered arguable that the First-tier Tribunal Judge had erred by failing to consider the scope of the Withdrawal Agreement and whether the Appellant was able to benefit from it in the absence of the relevant document.

5. When the appeal was called on for hearing, there was no appearance by or behalf of the Appellant. On 7 November 2022 the solicitors who had hitherto been acting for the Appellant notified the Tribunal that they were without instructions. The Tribunal's electronic file showed that notice of the time, date and place of the hearing had been given to the Appellant at the address he had stated was his home address on his application for permission to appeal. The Tribunal considered that it was fair and just to proceed to hear the Appellant's appeal in his absence: Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 was applied.

6. In the Appellant's absence the Tribunal considered the permission to appeal application and the grant of permission, which will be discussed further below.

7. Ms Everett for the Respondent submitted that the Appellant did not hold the required relevant document and there was no facilitation of his presence. The Withdrawal Agreement had no application. Celik (EU exit; marriage, human rights) [2022] UKUT 00220 (IAC) applied. The judge's decision was in substance correct. The Appellant's appeal should be dismissed.

8. The Tribunal noted that the Appellant's EUSS application was made after 31 December 2020, and also after 30 June 2021, i.e., after the transitional period and after the grace period. The Appellant had not applied for his durable partnership to be recognised under the Immigration (European Economic Area) Regulations 2016 prior to the repeal of those regulations effective on 31 December 2020 and so held no relevant document to show that he was an Extended Family Member. The Appellant's presence in the United Kingdom had not been facilitated by the Respondent under any relevant EU provision, so the Appellant had no separate rights accruing under the Withdrawal Agreement.

9. The Tribunal accordingly ruled that the First-tier Tribunal Judge was correct to dismiss the appeal and had done so on the correct legal basis.

10. Celik (above) was decided after Judge Buckwell had promulgated his decision, and its guidance provides further reasons for finding that there was no material error of law:

> *(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) 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.*

11. It follows that the Appellant who could not meet Appendix EU of the Immigration Rules had no rights under the Withdrawal Agreement. His appeal to the Upper Tribunal must be dismissed.

DECISION

The Appellant's appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed **R J Manuell** **Dated** 11 November 2022

Deputy Upper Tribunal Judge Manuell