



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

Appeal Number: UI-2022-002573
EA/11812/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 19 October 2022**

**Decision & Reasons Promulgated
On 9 February 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE DEPARTMENT

Appellant

and

**EDON FARRICI
(NO ANONYMITY ORDER SOUGHT)**

Respondent

Representation:

For the Appellant (Secretary of State): Ms S Cunha, Senior Home Office
Presenting Officer

For the Respondent: None

DECISION AND REASONS

1. The Respondent, a national of Albania, date of birth 10 November 1993, applied under the European Union Settlement Scheme (EUSS) for a family permit and the decision was refused in the notice dated 6 July 2021.

2. The matter came before First-tier Tribunal Judge Morgan who on 9 February 2022 promulgated his decision whereby he allowed the Respondent's appeal.
3. The difficulty that was faced was that the Respondent simply did not meet the particular requirements of the EUSS, and the Judge strayed into the area raised by the Advocate for Mr Farrici that the Respondent's rights under the Withdrawal Agreement had not been respected.
4. The law in relation to this matter has been, to a degree clarified, although many of the issues raised by EUSS decisions do raise problems particularly if applications were originally made under the EEA Regulations 2016. That is immaterial here. The position in Celik [2022] UKUT 00220 has clarified the law in relation to these issues and the Secretary of State at its heart relied upon Celik as the basis to attack the Judge's decision.
5. The matter was listed for hearing on 19 October 2022 and correspondence indicates that Mr Farrici (The Respondent) did not wish to take part in the proceedings and will not take part in the appeal as such, the reason being that he intended to make a fresh application to regularise his immigration status under a different appropriate route. Sentinel Solicitors, said they wished to withdraw the appeal. The difficulty with that was that Mr Farrici was not for the purposes of the Upper Tribunal proceedings the one who could withdraw an appeal, it was only for the Secretary of State to do so. In the result the Solicitors stood by their general decision to withdraw in the sense of not appearing at the hearing of the appeal: They do not pursue arguments of any kind that the decision was properly made by the First-tier Tribunal Judge.
6. In the circumstances I concluded that the Judge's decision was in error of law and that the appropriate outcome was that the appeal of Mr Farrici should be dismissed. No further representations having been made as to that matter, I concluded that the right course was to proceed to re-determine the entirety of the appeal myself.

NOTICE OF DECISION

The appeal of the Secretary of State succeeds. The following decision is substituted the appeal of Mr Farrici is dismissed.

No anonymity order was sought nor is one appropriate.

FEE AWARD

If any fee award has been made which is not apparent then no fee award would be appropriate.

A handwritten signature in black ink, appearing to read 'T. Davey'.

Signed

Date

Deputy Upper Tribunal Judge Davey

27 October 2022