



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003162
First-tier Tribunal No:
EA/12222/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 08 March 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Abdul WAHEED
(No anonymity direction made)

Appellant

and

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

Heard at Field House On 28 November 2022

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge M B Hussain promulgated on 28 April 2022.
2. The Appellant is a citizen of Pakistan born on 15 December 1995. On 19 April 2021 he married Mr Stelian-Emilian Bratulescu (d.o.b. 22 March 1995), a citizen of Romania. On 20 April 2021 he made an application

under the European Union Settlement Scheme ('EUSS'). The application was refused on 4 August 2021. In substance the application was refused firstly because the marriage had taken place after the specified date of 31 December 2020, and accordingly the Appellant did not satisfy the definition of a 'family member' of an EEA citizen; consideration was given in the alternative to the 'durable partner' route, but the Respondent's decision-maker determined that the Appellant did not hold specified documentation under the EEA Regulations as a durable partner.

4. The Appellant appealed to the IAC.
5. Before the First-tier Tribunal it was not disputed by the Appellant that the Respondent's decision was in accordance with Appendix EU of the Immigration Rules; the Judge - seemingly of his own motion - went on to consider whether the Appellant might benefit from any provision under the Withdrawal Agreement: (see FTT decision at paragraph 19). The Judge concluded that there was no benefit to be had: in particular the Appellant could not avail himself of Article 18.1(r) of the Withdrawal Agreement, and so there could be no 'proportionality' assessment. The appeal was dismissed accordingly.
6. The Appellant was granted permission to appeal by First-tier Tribunal Judge Rhys-Davies on 24 May 2021, on the basis that the Judge was arguably in error and should have considered proportionality under Article 18.1(r) of the Withdrawal Agreement.
7. Since the hearing before the First-tier Tribunal, and since the grant of permission to appeal, the issues raised in this case have been the subject of consideration by the Upper Tribunal in the cases of **Batool and others (other family members: EU exit) [2022] UKUT 00219 (IAC)** and **Celik (EU exit; marriage; human rights) [2022] UKUT 00219 (IAC)**.
8. Paragraphs 1 and 2 of the headnote in **Celik** are in these terms:

“(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.”
9. By letter dated 23 November 2022 the Appellant's solicitors wrote to the Tribunal indicating that there would be no attendance, and enclosing,

amongst other things, a written submission prepared by Counsel. In the written submission it was accepted that in light of the decisions in **Celik** and **Batool** *“the Appellant is unable to rely upon the terms of the Withdrawal Agreement, particularly Article 18.1(r) as his residence was not being facilitated by the respondent prior to 31 December 2020 and the date of his marriage was after 31 December 2020”*. The Tribunal was *“invited to make a decision on the error of law accordingly”*.

10. Although the representative’s letter also invited consideration of the case ‘on the papers’, it has remained in our list. However in all the circumstances we did not consider it necessary to hear submissions from Ms Everett.
11. We accept the position set out in the Appellant’s written submissions to be an adequate and realistic reflection of the impact of the decision in **Celik** on his challenge to the decision of the First-tier Tribunal. The Judge’s decision was in substance ‘in line’ with the reasoning in **Celik**: there was no error of law in the Judge concluding that Article 18.1(r) did not avail the Appellant.

Notice of Decision

12. The decision of the First-tier Tribunal contained no error of law and stands.
13. The Appellant’s appeal remains dismissed.

Signed: I A Lewis

Date: **28 November 2022**

Deputy Upper Tribunal Judge I A Lewis