IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003112
First-tier Tribunal No: EA/15942/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 16 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE B. KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ARMARILDO BESHIRI

Respondent

Representation

For the Appellant: Mr Whitwell, Senior Home Office Presenting Officer
For the Respondent: Ms Harris, Counsel instructed by Waterstone Legal Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of Judge of the First-tier Tribunal Morgan promulgated on 3 May 2022.

For convenience, I will refer to the parties as they were designated in the First-tier Tribunal.

2. The factual matrix is not in dispute. In summary, the appellant is a citizen of Albania who began cohabiting with an EEA national ("the sponsor") in September 2020. He married the sponsor in August 2021. The appellant and sponsor had intended to marry sooner (before the end of 2020) but because of the Covid-19 pandemic did not manage to do so. The appellant did not apply for a residence card under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") prior to the revocation of the EEA Regulations on 31 December 2020.

3. On 25 August 2021 the respondent refused the appellant's application for pre-settled status under the EU Settlement Scheme on the basis that (i) he was not married prior to 31 December 2020; and (ii) he could not succeed as a durable partner because he had not been issued with a residence card or family permit under the EEA Regulations.

4. It was common ground before the First-tier Tribunal that the appellant could not succeed under Appendix EU of the Immigration Rules for the reasons given by the respondent: that is, as of 31 December 2020 he was not a spouse of an EEA national and he could not qualify as a durable partner because he did not have, and had not applied for, a residence card. The judge, however, allowed the appeal under the EU Withdrawal Agreement on the basis that the respondent's decision refusing the appellant pre-settled status was disproportionate.

5. The respondent's grounds submit that the judge erred by failing to appreciate that the EU Withdrawal Agreement was not applicable to the appellant.

6. Before us, Ms Harris accepted that, in the light of *Celik (EU exit; marriage; human rights)* [2022] UKUT 00220 (IAC), the appellant could not succeed. This is plainly correct. The appellant had not applied for a residence card (ie facilitation of his residence in the UK) prior to 31 December 2020 and therefore, as explained in *Celik*, he had no substantive rights under the EU Withdrawal Agreement. The headnote to *Celik* states the position clearly, 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.

7. Ms Harris argued that the appeal should be stayed pending the appeal of *Celik* in the Court of Appeal (where a decision is awaited on whether to grant permission to appeal). She relied on *R (on the application of AO & AM) v Secretary of State for the Home Department (stay of proceedings - principles)* [2017] UKUT 00168 (IAC) to support her contention that a stay would be appropriate. However, as Mr Whitwell pointed out, the Upper Tribunal in *AO and AM* made clear that staying immigration cases pending future appellate decisions is a power that should be exercised cautiously. Paragraph 23(d) states:

> (d) Great caution is to be exercised where a stay application is founded on the contention that the outcome of another case will significantly influence the outcome of the instant case.

8. Having regard to the overriding objective, as expressed in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (dealing with cases fairly and justly), we are not satisfied that it is appropriate in this case to stay the proceedings. *Celik* is a carefully considered and well reasons decision of a Presidential Panel and there is no reason to believe it is likely to be overturned. Moreover, it is uncertain whether the Court of Appeal will even grant permission and, if they do, how long it will be before a judgment is made. We are not persuaded, having had regard to all of the circumstances, that a stay should be granted in this case.

9. Accordingly, the decision of the First-tier Tribunal is set aside. We remake the decision of the First-tier Tribunal by dismissing the appellant's appeal against the respondent's decision to refuse his application for pre-settled status.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 12 December 2022