



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Ce-File Number: UI-2022-
003148**
**First-tier Tribunal No:
EA/16366/2021**

THE IMMIGRATION ACTS

**Heard at Field House IAC
On the 18 November 2022**

**Decision & Reasons Promulgated
On the 10 March 2023**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ZAIM DAKU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Miss J Fisher, instructed by Rashid and Rashid Solicitors

DECISION AND REASONS
(EXTEMPORE)

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter the claimant, against a decision of the Secretary of State refusing him leave to remain under

the EU Settlement Scheme. We say respectfully that our colleague, Upper Tribunal Judge Canavan, explained the point very succinctly in the grant of permission to appeal where she said at paragraph 2:

“Following the decisions of the Upper Tribunal in *Batool and others (other family members: EU exit)* [2022] UKUT 00219 (IAC) and *Celik (EU exit; marriage; human rights)* [2022] UKUT 00220 (IAC) the grounds of appeal are arguable. The marriage postdated the United Kingdom’s exit from the European Union. There is no evidence to show that the appellant applied for or was facilitated residence as an ‘other family member’ (durable partner) before 31 December 2020”.

2. Miss Fisher began by asking us to stay these proceedings because the decisions in **Batool** and **Celik** had proved controversial and efforts had been made to secure permission to appeal. As far as we are aware permission to appeal has not been given by the Court of Appeal and, whilst we understand the sense of concern from members of the Bar involved, there is presently no more than an aspiration that there will be an appeal. We see no proper reason to adjourn pending the outcome of applications which may not even have been made yet. It is clear that the decisions in **Batool** and **Celik** are particularly considered and are intended to be followed and although they do not strictly bind us we have every intention of following them unless given good reasons not to and we find that the Secretary of State is entitled to have us apply the law as it is and the claimant is not entitled to a stay because he hopes the law might change on some uncertain stage in the future. Once that hurdle is crossed the claimant is left in very considerable difficulty.
3. The fundamental problem is that he is unable to show that his residence was facilitated as another family member before 31 December 2020; he just does not have the necessary documentation. The fact is it was not facilitated and he cannot establish his case. It is particularly clear from **Celik** that that is a fundamental requirement and the failure to appreciate that has led the First-tier Tribunal into error. We say this respectfully because the First-tier Tribunal Judge did not have the benefit of the learning in **Batool** and **Celik** but, although we have considerable sympathy for the First-tier Tribunal Judge, it is now plain the decision was wrong.
4. We note Miss Fisher’s opposition to the decisions but, probably wisely, she did not develop any points before us and we intend to follow those decisions.

Notice of Decision

5. In the circumstances we find that the First-tier Tribunal erred in law. We set aside its decision and we substitute a decision dismissing the claimant’s appeal against the Secretary of State’s decision.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 10 January 2023