



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006361

First-tier Tribunal No:
EA/00001/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of June 2024

Before
UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between
ARTUR CERKEZI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Cerkezi was unrepresented and appeared in person

For the respondent: Ms A Nwachuku, Senior Presenting Officer

Heard at Field House on 23 May 2024

DECISION AND REASONS

Introduction

1. Mr Cerkezi (we will refer to him from now on as “the appellant”) is unrepresented and we have therefore attempted to write this decision in a way which will help him to understand the reasons why we have reached our conclusion that his appeal must fail.
2. This case is at the re-making stage. This means that we are looking again at the appellant’s case following the decision in May 2023 by Upper Tribunal Judge Bruce that the First-tier Tribunal (Judge Head) had made legal mistakes when saying ‘yes’ to the appellant’s appeal back in July 2022. The decision of Judge Head was set aside (overturned) because of the decision of the Upper Tribunal in Celik (EU Exit, marriage, human rights) [2022] UKUT 00220 (IAC). That decision meant that people in the appellant’s circumstances (which we will come back to later) could not win their case in relation to the Immigration Rules (Appendix EU) and the Withdrawal Agreement.
3. Judge Head did accept that the appellant’s relationship with and marriage to Ms Melim (a Portuguese national) was perfectly genuine. That particular conclusion remains undisturbed, as confirmed by Ms Nwachuku at the hearing before us.
4. Apart from the fact of the appellant’s relationship with Ms Melim, the following facts are clear:
 - (a) the appellant is a national of Albania;
 - (b) he came to the United Kingdom unlawfully in 2016 and has never had permission to stay in this country, whether because of European Union law or on any other basis;
 - (c) he began his relationship with Ms Melim in 2017;

(d) the couple married in May 2021, although they had tried to do so in the autumn of 2020;

(e) the couple now have a young daughter, born in February 2023;

(f) the appellant has made no new application to the Home Office since his application under the Immigration Rules (Appendix EU) back in May 2021.

5. What we are concerned with now is the legal position relating to the appellant's case.

The legal issues

6. We have to decide whether the appellant is entitled to get permission to stay in the United Kingdom because of either (a) the Immigration Rules (Appendix EU); and/or (b) the Withdrawal Agreement.

7. The appellant cannot rely on human rights (what is normally referred to as Article 8 ECHR). The current legal position prevents him from doing so, as explained by the recent decision in the case of Dani (non-removal human rights submissions) Albania [2023] UKUT 00293 (IAC). For the avoidance of any doubt, no notice was issued to the appellant under section 120 of the Nationality, Immigration and Asylum Act 2002.

The evidence

8. The appellant told us that he had not provided any new evidence after the hearing before Judge Bruce in May 2023. We have considered all of the relevant existing evidence.

The hearing

9. The appellant was assisted by an Albanian interpreter. We explained the proceedings to him, summarising the facts and the current legal position. We asked him for any comments he wished to make. The appellant explained that he had tried to get married before the end of December 2020, but the lockdown rules had prevented this. He confirmed that his wife is currently on maternity leave and that she had been granted indefinite leave to remain in March of this year. The couple's daughter has not yet been registered as a national of either Portugal or Albania.
10. Ms Nwachuku confirmed that the respondent's position was that the appellant's case had to fail because of the law relating to people in his position. She had no additional submissions to make.
11. At the end of the hearing, we told the appellant that we would not be giving our decision straightaway, but would go away and think about his case carefully and set everything out in writing.

Conclusions and reasons

12. Without intending any disrespect to the appellant, we can set out our conclusions and reasons fairly briefly.
13. We appreciate the appellant's concern about not being able to get married before 31 December 2020 because of the lockdown rules at the time. However, this issue was dealt with by the Court of Appeal in a decision called Celik v SSHD [2023] EWCA Civ 921. There were a lot of people in the appellant's situation. The Court decided that not being able to get married sooner because of the Covid-19 pandemic could not help people in the appellant's position when it came to an appeal. We cannot ignore the decision in Celik v SSHD and we conclude that the inability to have got married sooner does not help the appellant in his appeal.

The Immigration Rules (Appendix EU)

14. It is accepted that the appellant was in a subsisting and genuine relationship with Ms Melim for some time before 31 December 2020 and that he was, as a matter of fact, in a “durable relationship” with her. That fact does not allow him to win his appeal because he also has to show that he was a “durable partner” within the definition set out in Appendix EU to the Immigration Rules.
15. He cannot show that he met the definition of “durable partner” for two reasons.
16. First, he did not have a “relevant document” as at 31 December 2020. In other words, he had never been given, or applied for, a residence card under European Union law (contained in what was called the Immigration (European Economic Area) Regulations 2016) before that date. The legal basis for this first reason is contained in Celik v SSHD.
17. The second reason is that the appellant did not have permission to stay in this country on any other basis apart from European Union law as at 31 December 2020. The legal explanation for this can be found in a decision called Hani (EUSS durable partners: para. (aaa)) [2024] UKUT 00068 (IAC).

The Withdrawal Agreement

18. The appellant cannot rely on the law contained in what is called the Withdrawal Agreement (an agreement between the United Kingdom and the European Union). This is because of the first reason set out in paragraph 15, above: he had not been given, and had not even applied for, a residence card before 31 December 2020. The detailed legal explanation for this is also contained in the decision in Celik v SSHD.

Anonymity

19. We make no anonymity direction because there is no good reason to do so.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

The decision in this appeal is re-made and the appeal is dismissed on all grounds available under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 23 May 2024