



**Upper Tribunal  
(Immigration and Asylum Chamber)  
003744**

**Appeal Number: UI-2022-  
EA/00770/2022**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 November 2022**

**Decision & Reasons  
Promulgated  
On 21 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON  
DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MR MUHAMMAD BILAWALLATIF  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr A Rehman of Counsel Instructed by Lawfare Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan and his date of birth is 15 March 1991. He appeals against the decision of the First-tier Tribunal (Judge Wylie) to dismiss his appeal against the decision of the respondent to refuse his application under the EU settlement scheme (EUSS). The

matter came before us to determine whether the First-tier Tribunal made a material error of law.

2. Permission to appeal was granted to the appellant by First-tier Tribunal (Judge Chohan) in the following terms. “At paragraph 43 of the decision, the representatives in the case had accepted that the sponsor was an EEA citizen. Nevertheless, the Judge then goes on to conclude that the sponsor is not an EEA citizen. It seems that this issue was not raised at the hearing. As such, the judge failed to give the parties an opportunity to deal with this issue. This issue alone needs to be explored further as there is possible unfairness and has a material bearing on the decision”.
3. The First-tier Tribunal heard evidence from the appellant. He had made an application on 1 June 2021 under the EU settlement scheme as a family member of his sponsor, Ms Dalgit Kaur, an Indian National with settled status in the United Kingdom under the EU settlement scheme. He claimed entitlement to status as her durable partner and claimed that their relationship started in October 2018, and they have lived together since November 2019.
4. The respondent refused the application under rule 6 of Appendix EU on the basis that the appellant did not meet the provisions of rule EU 11 or EU 14 of Appendix EU as he had not been issued with a family permit or a residence card under the EEA regulations, which fact was not disputed by the appellant.
5. The Judge set out various provisions of Appendix EU, the Withdrawal Agreement and the Citizens Directive 2004/38 in the decision. At paragraph 43 the Judge stated that both parties seemed to have accepted, at the hearing, that the sponsor was a relevant EEA citizen but stated that it is evident that the sponsor is in fact an Indian national with indefinite leave to remain in the United Kingdom. The Judge noted that the sponsor’s status under the EU settlement scheme is derived from her now dissolved marriage to an Italian citizen.
6. The Judge stated that as the sponsor was not an EEA citizen none of the provisions of Appendix EU and the Withdrawal Agreement applied to the appellant and that the appellant’s application is misconceived. The Judge concluded that the appellant cannot succeed in the appeal as he is not a durable partner or a family member of an EEA national.
7. The grounds of appeal argue that the appellant applied for pre-settled status in the United Kingdom on 1 June 2021 on the basis of his durable relationship with this EEA national partner because they are in a genuine and subsisting relationship and therefore his appeal “should be considered sympathetically”.

### **Error of law decision**

8. The appellant made an application as the durable partner of an EEA citizen pursuant to the EUSS regime, which was dismissed by the First-tier Tribunal on the basis that the sponsor is an Indian national and not an EEA citizen. As the sponsor was not an EEA citizen none of the provisions of Appendix EU and the Withdrawal Agreement applied to the appellant and the appellant's application pursuant to EUSS is misconceived.
9. The appellant exercised his right of appeal under Regulation 3 of the Immigration (Citizens' Rights Appeals) EU Exit Regulations 2020 ("the 2020 Regulations") which did not apply to him.
10. Permission to appeal was granted to the appellant on the basis of a possible procedural error but the appellant's appeal cannot succeed under Appendix EU as the fundamental requirement is that the appellant's sponsor is a EU citizen. As such the appellant cannot benefit from EU law and that the respondent's decision is not in breach of the appellant's rights under the withdrawal agreement as he does not have any. **OK (PTA; alternative findings) Ukraine** [2020] UKUT 44 (IAC) confirms that '*Permission should not be granted on the grounds as pleaded if there is, quite apart from the grounds, a reason why the appeal would fail*'.
11. We note, the respondent's reasons for refusal letter was drawn in wide terms but it specifically states that the appellant must meet the eligibility requirements as set out in set out in Appendix EU. The refusal letter clearly states that the appellant has not demonstrated that he is a relative of a relevant EEA citizen and also does not have a relevant document.
12. The appellant's sponsor acquired her right to remain in the United Kingdom through her marriage to an Italian citizen from whom she is now divorced. The appellant argues that the sponsor's children are Italian citizens but his application was not based on his relationship with the children and it was not a ground of appeal.
13. Section 55 of the Borders Citizenship and Immigration Act 2009 was raised in the grounds of appeal and it is apparent from the decision of the First-tier Tribunal Judge that he was clearly aware of the existence of these children. However, no substantial case was made on the basis of these children. Furthermore, there was minimal information in relation to the children. We therefore find that this ground of appeal has no merit.
14. Although Article 8 grounds were argued, it was sensibly conceded by Mr Rehman that the appellant does not seek to rely on Article 8 as it is clear from regulation 9 (4) of the 2020 Regulations that the prohibition in regulation 9 (5) states that a new matter cannot be considered without the consent of the Secretary of State which he accepted has not been granted.

15. Mr Rehman accepted at the hearing before us that the appellant could not succeed as a durable partner on the basis of *Celik EU exit; marriage; human rights [2022] UKUT 00220*, even if the appellant's sponsor was an EU national which she is clearly not.
16. Mr Rehman argued in his grounds of appeal that the appellant suffered from an historical injustice however Mr Rehman accepted that the appellant's previous application under the Immigration (European Economic Area) Regulations 2016 was refused and the appellant did not appeal against that refusal. This argument has no merit.
17. The appellant had no basis to make an application under the EU regulations and therefore the issue of proportionality under Article 18(r) of the Withdrawal Agreement does not apply to the appellant.
18. We find that there was no material error in the Judge's decision to dismiss the appellant's appeal pursuant to EU law. Accordingly we dismiss the appellant's appeal.

### **Notice of Decision**

#### **Appeal dismissed**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

No anonymity direction is made.

Signed by

Deputy Upper Tribunal Judge S Chana

Dated this 2<sup>nd</sup> day of December 2022

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email.**

No anonymity direction is made.

Signed Judge S Chana

Date 2<sup>nd</sup> day of December 2022