



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002115
First-tier Tribunal No:
EA/10645/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 4 November 2022

Decision & Reasons Promulgated
On the 15 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD UMAR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS
(extempore)

1. This is an appeal brought by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter the claimant, against the decision of the Secretary of State refusing him a residence card under the EUSS as a family member of an EEA national.

2. The respondent did not appear before me and indeed had not attended before the First-tier Tribunal. I am satisfied that notice of hearing was sent on, I think, 13 October, certainly well before the hearing. I am satisfied that the claimant was not present in the building today because my ushers made enquiries and indeed contacted the solicitors to see if they wanted to make any representations about the claimant's absence and they did not.
3. Being satisfied that the claimant knows, or ought to know, about the hearing I decided to continue in the claimant's absence.
4. The grounds of appeal to the Upper Tribunal criticised the judge, with some justification, for failing to identify precisely what Rules were being applied and it being hard to follow from that just what the judge did. However on any version of events it is the Secretary of State's case, I find rightly, that the judge got it wrong. This is a case that had to be brought under the EU settlement scheme and had to be brought on the basis that the claimant was in a "durable relationship" which is a term that requires proof in a particular way and requires proof by providing a document that the claimant did not have.
5. There may, occasionally in unlikely circumstances, be a way around these requirements but there is nothing to suggest that such things apply here.
6. The judge just did not wrestle with the requirements of the Rules. If the judge had, then I am entirely satisfied the judge would have dismissed the appeal. This rather brutal analysis is supported entirely by the decision of this Tribunal by its then President in **Celik (EU Exit; marriage; human rights) [2022] UKUT 00220**. That may not strictly bind me but I have every intention of following it and respectfully adopt its reasons and rely on that to justify my decision that the First-tier Tribunal erred in law and the only decision that could be made on these facts is a decision to dismiss the claimant's appeal against the Secretary of State's decision.

Notice of Decision

7. I allow the Secretary of State's appeal; I set aside the decision of the First-tier Tribunal and I substitute an appeal dismissing the appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 December 2022