



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

Appeal Number: UI-2022-003197  
EA/11753/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 October 2022**

**Decision & Reasons Promulgated  
On 3 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SEJDIN RRUSHI**

(anonymity direction not made)

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: No representation

**DECISION AND REASONS**

1. This is an appeal 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 limited leave to remain in the United Kingdom under the EU settlement scheme as set out in Appendix EU of the Immigration Rules.
2. The claimant did not appear before me. The Notice of Hearing is dated 29 September 2022 and was sent by e-mail on or about that date. I have a letter sent by email from the former solicitors dated 21 October 2022 explaining that they had to ask to come off the record because they were

no longer in funds and also asking that further correspondence be sent to the claimant's wife at an address that was given. Clearly the Notice of Hearing was served in time on the claimant's then representatives who acted responsibly by explaining their absence today. In the circumstances I have no hesitation in going on to determine the appeal.

3. The First-tier Tribunal gave a detailed decision after a hearing where the claimant was represented but the Secretary of State did not attend. It promulgated its decision on 1 April 2022.
4. Mr Tufan's submissions are extremely simple. They are that the First-tier Tribunal did not have the benefit of a decision (that is now becoming very well-known) in **Celik (EU exit, marriage, human rights)** [2022] UKUT 220 (IAC). This decision was made by the former President of this Tribunal (Lane J) and is intended to look very carefully at the issues raised in this appeal and has resolved them in a way that benefits the Secretary of State rather than the claimant. Mr Tufan says that I should follow that decision and for the reasons given in that decision I should say the First-tier Tribunal erred in law and I should set aside the decision and substitute a decision dismissing the appeal against the Secretary of State's decision.
5. The First-tier Tribunal was, I find, wrong for all the reasons set out in the grounds supporting the application for permission to appeal. The fundamental point is that the claimant does not meet the necessary requirements because he did not have the necessary proof of his entry being facilitated by the material date. This is not a technical or minor omission; the qualifying document prescribed by the Rules to show that the claimant came within their scope was not available because he was not entitled to it.
6. It follows that the appeal should have been dismissed.
7. The First-tier Tribunal Judge may have appreciated the difficulty but also considered the application of Article 18 of the Withdrawal Agreement concerning proportionality and, seeing some need for a discretionary remedy, allowed the appeal.
8. For the reasons are explained in **Celik**, that approach is just wrong. There is no discretion, there is no Article 18 to consider, it is not a qualifying document. The judge applied her mind to matter that we now know were wholly immaterial. It follows that I have to follow Mr Tufan's submission the First-tier Tribunal was wrong.
9. I have little doubt that the First-tier Tribunal would not have erred if the Judge had had the assistance that was given to me.
10. Be that as it may, I set aside the decision of the First-tier Tribunal.
11. I find that on the facts that are clear in this case the appeal could not succeed and should not have succeeded and I substitute a decision dismissing the appeal against the Secretary of State's decision.

### **Notice of Decision**

12. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision dismissing the claimant's appeal against the Secretary of State's refusal.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 14 November 2022