



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003133
On appeal from: EA/15202/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th September 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SONIA PULIDO BAQUERO
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Ms Julie Isherwood, a Senior Home Office Presenting Officer

For the Respondent: In person

Heard at Field House on 5 September 2023

DECISION AND REASONS

Introduction

1. The Secretary of State challenges the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 21 October 2021 to refuse the claimant settled or pre-settled status as the spouse of a relevant EEA national. The claimant is a citizen of Colombia.
2. **Mode of hearing.** The hearing today took place face to face, with the claimant representing herself.

3. For the reasons set out in this decision, I have come to the conclusion that the decision of the First-tier Tribunal must be set aside and the decision remade, dismissing the appeal.

History of this appeal

4. The claimant and sponsor married after 11 p.m. on 31 December 2020. The claimant had no document proving that before that date and time she was her husband's durable partner and resident in the UK on that basis. Nor did she have another lawful basis of stay when this application was made.
5. The First-tier Judge allowed the appeal. The claimant represented herself, and the Secretary of State did not arrange representation. The Judge recognised that the claimant could not bring herself within Appendix EU of the Immigration Rules HC 395 (as amended). The claimant's evidence was taken at its highest and she was not cross-examined.
6. The appeal was allowed under the provisions of the Article 19(1)(r) of the Withdrawal Agreement (the correct reference is to Article 18(1)(r)). The First-tier Judge held that the claimant was a durable partner of her now husband before the specified date, and that the requirement for a document proving her to be a durable partner was an incorrect transposition of the Withdrawal Agreement provisions. The Secretary of State appealed to the Upper Tribunal.
7. Permission to appeal to the Upper Tribunal was granted on the basis that the First-tier Judge had arguably fallen into legal error by concluding that the requirement to produce a relevant document to prove the existence of a durable relationship before the specified date was contrary to the Withdrawal Agreement. The Judge considered it arguable that the Secretary of State's contention that the Withdrawal Agreement has no applicability on these facts. A third point, referring to a finding on the husband's Article 8 ECHR rights, is puzzling as no such conclusion appears in the First-tier Tribunal decision. I have disregarded it.
8. The claimant filed a Rule 24 Reply, advancing in detail the argument under Article 18(1)(r) of the Withdrawal Agreement which has since been rejected by the Court of Appeal in *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921.

MPB Solicitors emails [4 September 2023]

9. On the morning of the hearing, the Upper Tribunal received from MPB Solicitors, who seem to have been assisting the claimant in these proceedings, a copy of an email chain between them and the claimant. I approach this document on the basis that attorney-client privilege has been waived.
10. At 12:23 p.m. on 4 September 2023, MPB Solicitors inform the claimant and her husband that Counsel is not willing to represent the claimant at

the hearing today because her attendance would waste the claimant's money and not achieve a positive outcome. The email continues:

"As I have explained to you on various occasions, when I took the case *Celik* was ongoing, but now it has come to an end. The Court of Appeal found against *Celik*. The Supreme Court decided not to grant permission to appeal. Any barrister who represents [the claimant] in tomorrow's hearing may face a reprimand/criticism from the Judge for continuing the case and wasting the Court's time, and making a client to incur in [sic] unnecessary costs."

11. At 13:06 p.m. on 4 September 2023, there is another email with a request to contact the solicitors as a matter of urgency, and to give instructions on whether to seek an adjournment.
12. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

13. The oral submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.
14. I spoke to the claimant, explaining that the advice she had been given by MPB Solicitors is right. The Court of Appeal has settled the Article 18(1)(r) point now, and her appeal could not succeed.
15. The claimant was clearly upset, and tearful. Fortunately, her husband had accompanied her and was able to look after her.
16. I told the claimant that I would send her written reasons for my decision, which I now give.

Conclusions

17. The Court of Appeal's conclusions in *Celik* are at [80]-[81] in the judgment of Lord Justice Lewis, with whom Lord Justice Moylan and Singh agreed:

"80. First, the Withdrawal Agreement sets out the categories of persons who would continue to be entitled to rights of residence after the end of the transition period. *They included persons who were married to an EU national and resident in the United Kingdom in accordance with EU law before the end of the transition period. They did not include persons such as the appellant who did not marry an EU national before that date and were not resident in the United Kingdom in accordance with EU law. ...*

81. ... The Withdrawal Agreement represents the settled agreement of the European Union and the United Kingdom as to who should be able to continue to have rights to reside after the departure of the United Kingdom from the European Union. That Agreement provided for a transition period. *Persons who met certain requirements before the end of that period would continue to have rights to reside. Persons who did not meet those*

requirements by that date would not have such rights.”
[Emphasis added]

18. This claimant is a person who was not married to an EEA national or in the UK before the specified date, and was not resident in the UK in accordance with EU law before that date. She is not within scope either of Appendix EU or the underlying agreement in the Withdrawal Agreement.
19. The Secretary of State’s challenge to the First-tier Tribunal decision is correct. The decision must be set aside and remade, dismissing the claimant’s appeal.

Notice of Decision

20. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the claimant’s appeal.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 5 September 2023