IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001520

First-tier Tribunal No: EA/12032/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20th of March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DENIS GEGA
(NO ANONYMITY ORDER MADE)

Respondent

On the papers

DECISION AND REASONS

1. In a Direction sent to the parties on 12 February 2024 I set out my preliminary view that following the handing down by the Court of Appeal on 31 July 2023 of Celik v Secretary of State for the Home Department [2023] EWCA Civ 921, the Upper Tribunal was able to dispose of the merits of the appeal without a further hearing on the basis the findings of the Court of Appeal clearly establish arguable merit in the Secretary of States challenge to the decision of a judge of the First-tier Tribunal who allowed the appellant's appeal against the refusal of his application; providing the parties a period of 14 days from the date of the sending of the direction for them to file any response to the proposed outcome.
2. No response has been received from either party. I therefore consider it appropriate for the Upper Tribunal to determine the merits of the application of the papers, without further hearing. I find that the overriding objective and interests of justice warrant such an approach.
3. I formally find the Secretary of State has made out First-tier Tribunal Judge O'Hanlon ('the Judge') materially erred in law by allowing the above respondent's appeal against the Secretary of State's decision to refuse his EU Settlement Scheme (EUSS) application on 28 January 2022.
4. The Judge found the above respondent met the definition of a durable partner under Appendix 1 of Appendix EU because (a) even though they were not living together in a relationship akin to marriage for at least two years, there was other significant evidence of the durable relationship [33], (b) even though the above respondent did not have a relevant document, they met the requirements under Annex 1 (bb) (aaa) [34], (c) the above respondent is a

family member of a relevant EEA citizen and therefore entitled to pre-settled status under the EU Settlement Scheme as he satisfies the requirements of Paragraph EU 14 of Appendix EU with the Immigration Rules [34].

5. The material legal error arises as the above respondent did not hold a relevant document as a durable partner as he had not made the required application before the specified date and did not otherwise have any lawful basis of stay in the UK for that period. The Judge therefore erred in finding the above respondent met the definition of 'durable partner' under Appendix (bb) (aaa) because he was never in the UK with some otherwise lawful leave while in a relationship with their sponsor, see Celik at [68].
6. The Court of Appeal rejected the argument they are obliged to read the definition of durable partner in Appendix 1 of Appendix EU down if no application was made or residence permit resulting, was made by the end of the transition date.
7. The above respondent's status had not been facilitated under Article 3(2) by the end of the transitional period meaning the above respondent could not benefit from Article 10(2) of the Withdrawal Agreement and, as a result, could not benefit from Article 18(d) contrary to what was found by the Judge.
8. In all the circumstances I find the Judge has materially erred in law and set the decision aside.
9. Applying the law of the facts as found, I substitute a decision to dismiss the appeal.

Notice of Decision

10. The First-tier Tribunal materially erred in law. I said the decision aside.
11. I substitute a decision to dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 March 2024