



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2022-002539

First-tier Tribunal Nos:
EA/13923/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of May 2024

Before

UPPER TRIBUNAL JUDGE L SMITH
DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

EDISON AGARAJ

Respondent

DECISION AND REASONS
[MADE WITHOUT A HEARING PURSUANT TO
RULE 39 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES
2008]

1. This is an appeal by the Secretary of State. For ease of reference, we refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Iqbal promulgated on 14 March 2022 (“the Decision”) allowing the Appellant’s appeal against the Respondent’s decision dated 16 September 2021 refusing him status under the EU Settlement Scheme (“EUSS”) as the spouse of an EEA national.
2. The Respondent refused the Appellant’s application on the basis that his marriage was not contracted until after 31 December 2020. Accordingly, the Appellant was not a family member prior to the date of the UK’s departure from the EU and could not benefit as such under either the rules relating to EUSS (Appendix EU) or the withdrawal agreement between the

UK and the EU on the UK's departure from the EU ("the Withdrawal Agreement").

3. It was accepted that the Appellant could not establish his case as a family member. It was however argued on his behalf that he was a durable partner prior to 31 December 2020 and could succeed on that basis. The Appellant also argued that the Respondent's decision was contrary to the Withdrawal Agreement. He relied in particular on Articles 18(1)(o) and (r) of the Withdrawal Agreement. Judge Iqbal accepted that latter argument and determined the Appellant's appeal in his favour on that basis.
4. The Respondent appealed the Decision on the basis that the Judge had misconstrued the Withdrawal Agreement, and that the Appellant could derive no substantive rights therefrom. It was also argued that the Judge had made material errors of fact.
5. Permission to appeal was granted by First-tier Tribunal Judge Lodato on 29 April 2022 in the following terms:

"1. The application is in time.

2. It is argued in the grounds that the judge misinterpreted the provisions of Appendix EU in finding that the appellant was a durable partner of his sponsor on the specified date even though he did not hold a relevant document. It is further argued that judge relied upon a demonstrable error of fact which tainted the overall decision. At paragraph 24(i), the judge stated that the application had been made before the end of the transition period which was contrary to his earlier summary of the procedural history, at paragraph 8, in which it was clear that the application was lodged during the grace period. I consider it to be arguable that this arguably erroneous factual finding produced an error of law in the finding that there was no requirement to hold a relevant document. It is also arguable that the conclusion that there was tension between the terms of Appendix EU and the Withdrawal Agreement was wrong in law."

The Appellant filed a full Rule 24 Reply dated 18 July 2022 seeking to uphold the Decision.

6. The matter came before this Tribunal (Upper Tribunal Judge Rimington and Deputy Upper Tribunal Judge Symes) on 6 February 2023. By that time, this Tribunal had given guidance relevant to the issues in this case in Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC) ("Celik"). Reliance was placed on that guidance by the Respondent. In consequence of that argument and that Celik was the subject of an appeal to the Court of Appeal, the Tribunal granted a stay. It did not determine the error of law issue.
7. The Tribunal's guidance in Celik was subsequently upheld by the Court of Appeal ([2023] EWCA Civ 921). Following the Court of Appeal's judgment, on 16 November 2023, directions were issued by Upper Tribunal Judge

Rimington, inviting the parties to agree a consent order to dispose of the appeal. If that were not agreed, the appeal would be listed for hearing.

8. No consent order having been filed, the appeal was listed before us for hearing on Friday 10 May 2024. On 8 May 2024, a consent order was filed. That was filed electronically with a covering message which reads as follows:

“Following prompting the solicitors (Vanguard Solicitors) have now accepted and returned signed a Consent Order so that the matter set down for Friday 10 May to be disposed of without the need for a hearing or their attendance.”

9. The consent order which was filed is said to have been signed electronically although we can discern no actual signatures. However, given the assurance in the covering email we are prepared to accept that the Appellant through his solicitors has agreed to resolve the appeal as set out in the consent order.

10. Unfortunately, the consent order is also somewhat confusing in that the Secretary of State is said in the heading to be the Respondent whereas he in fact remains the Appellant and it is evident from the body of the consent order that, where reference is made to “the Respondent” that is intended to refer to Mr Agaraj.

11. With those caveats, the consent order is in the following terms:

“Under Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the parties consent to the disposal of the above appeal on the following agreed basis:

1. On the Respondent having expressed a wish to take no further part in proceedings in this appeal by the Appellant Secretary of State;
2. The Tribunal set aside the decision of the First-tier Tribunal as the Appellant’s grounds establish an error of law following the Court of Appeal decision in *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921; and
2. remakes the decision dismissing the appeal. ”

12. We are satisfied that it is appropriate to make a decision without a hearing and in accordance with the terms of the consent order. We therefore make that decision below.

NOTICE OF DECISION

The Decision of Judge Iqbal promulgated on 14 March 2022 involved the making of an error of law. We therefore set aside that Decision. We re-make the decision by dismissing the Appellant’s (Mr Agaraj’s) appeal.

L K Smith
Judge of the Upper Tribunal

Immigration and Asylum Chamber
9 May 2024