



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002829
First-tier Tribunal No:
EA/11382/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 August 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MEGLI BUCA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Lawson, a Senior Home Office Presenting Officer.
For the Respondent: No appearance.

Heard at Birmingham Civil Justice Centre on 13 August 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Elliott ('the Judge'), promulgated on 11 April 2022, in which the Judge allowed the appeal against the refusal of an application for settlement in the UK under the EU Settlement Scheme.
2. Mr Buca is a citizen of Albania born on 19 July 1988.
3. Notice of today's hearing was sent to all parties and I am satisfied that all have been lawfully served with notice setting out the date, time, and venue of the hearing. The listing follows a direction issued by the Tribunal following the handing down of the Court of Appeal at its decision in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921 which upheld the decision of the Upper Tribunal. The direction provided a preliminary view that the Secretary of State's appeal was bound to succeed and asking the parties to set out their counterarguments, if appropriate. It was stated that if no response was received to the directions the matter would be listed for disposal. It is for that reason the matter comes before me today.
4. There was no response to directions. There has been no response to the notice of hearing indicating Mr Buca is unable to attend or seeks an adjournment. I am

satisfied it is in the interests of justice to proceed in the absence of Mr Buca, particularly in light of the fact there is only one outcome of the appeal.

5. Judge Elliott's findings are set out from [55] of the decision under challenge.
6. It was accepted that Mr Buca married an EU national, but that marriage took place after 11 PM 31 December 2020 [56].
7. Judge Elliott also record it being accepted that Mr Buca did not hold a relevant document in the form of the family permit or residence card issued under the EEA Regulations 2016 as a spouse or durable partner of the relevant EEA citizen [57].
8. Judge Elliott therefore dismissed the appeal under the EUSS which is a correct finding.
9. Judge Elliott went on, however, to allow the appeal on the basis of an acceptance of an argument that refusal of the application was contrary to the Withdrawal Agreement. That led to the challenge by the Secretary of State.
10. The finding the marriage took place after the specified date and the fact Mr Buca did not hold a 'relevant document' means that he had no rights under EU law preserved by the Withdrawal Agreement.
11. For the reasons set out in the application for permission to appeal and grant of permission to appeal I find the Judge has erred in law in a manner material to the decision to allow the appeal and set that decision aside.
12. The findings recorded at [56] and [58] are preserved findings as is the finding Mr Buca cannot meet the requirements of the EUSS/Immigration Rules.
13. I find applying the correct legal interpretation of the Withdrawal Agreement that the only decision open to the Tribunal on the facts is that the appeal is dismissed. I substitute a decision to that effect.

Notice of Decision

14. The First-tier Tribunal materially erred in law. I set that decision aside.
15. I substitute a decision to dismiss the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 August 2024