



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-002833**  
**First-tier Tribunal No:**  
**EA/14943/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 20 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE OWENS & UPPER TRIBUNAL JUDGE LODATO**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ELMI DACI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Terrell, Senior Presenting Officer

For the Respondent: Not present

**Heard at Field House on 12 August 2024**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Mill, dated 24 March 2022. The judge allowed Mr Daci's appeal against the decision of the Secretary of State, dated 13 October 2021, refusing him leave to remain under the EU Settlement Scheme ('EUSS') with his sponsor, and long-term partner, Ms Nicolae.

**The Decision of the Judge**

2. The judge noted at the outset of his reasons that the factual matrix was not in dispute. Neither Mr Daci nor Ms Nicolai were cross-examined. The following facts were found on the evidence:
  - a) Ms Nicolae was a Romanian national with pre-settled status under the EUSS [11].
  - b) Mr Daci met Ms Nicolae in April 2020 and cohabited at her rented accommodation from September 2020. By the time of the hearing,

they had been living together for 18 months. The judge found them to be in a “genuine and subsisting durable relationship”. [12-13]

- c) The couple agreed to marry in September 2020. Administrative barriers related to the Covid-19 pandemic prevented them from getting married until 20 July 2021. [14]
  - d) Mr Daci was not issued with a ‘relevant document’ in accordance with the EUSS. [16]
3. The judge applied the legal scheme to the facts as he found them to be. At [16], he found Mr Daci to be the durable partner of his sponsor in accordance with the EUSS. Between [17] and [19], Article 18 (o), (r) and (e) of the Withdrawal Agreement were relied upon, and the conclusion reached that the “failure” of the Secretary of State to provide Mr Daci with a ‘relevant document’ was both unlawful and disproportionate. The requirement to have a ‘relevant document’ was described as an “unnecessary administrative burden”.
4. The appeal was allowed under the Immigration Citizens’ Rights Appeals (EU Exit) Regulations 2020 (‘the 2020 Regulations’). The overall basis for the decision was that Mr Daci met the requirements of the EUSS, and the refusal amounted to a breach of his rights under the Withdrawal Agreement.

## **Grounds of Appeal**

### **Material misdirection in law**

5. It was argued that the judge erred by allowing the appeal under the EU settlement scheme when Mr Daci was not a ‘family member’ in accordance with the EUSS and did not hold a ‘relevant document’ to bring him within the terms of the definition of ‘other family member’. Further, the judge erred by finding that he came within the personal scope, and was protected by, the Withdrawal Agreement. It was irrational for the judge to find that the failure of Mr Daci to satisfy the requirements of Appendix EU was a disproportionate breach of his rights under the Withdrawal Agreement.

### **Permission to Appeal**

6. Permission was granted by UTJ Norton-Taylor on 7 September 2022 in reliance on the Presidential guidance in Celik (EU exit; marriage; human rights) [2022] UKUT 220 (IAC).

### **The Hearing**

7. On 29 June 2024, Mr Daci (who is no longer represented) sent an email to the tribunal to withdraw his appeal because he was in Albania pursuing an entry clearance application to return to the UK to join his wife. The appeal proceedings in the Upper Tribunal are brought by the Secretary of State. It follows, in line with Ahmed (rule 17; PTA; Family Court materials) [2019] UKUT 00357 (IAC), that Mr Daci cannot withdraw the appeal. The headnote includes the following guidance:

*Where P is the respondent to the Secretary of State’s appeal in the Upper Tribunal against the decision of the First-tier Tribunal to allow P’s appeal, P cannot give notice under rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 so as to withdraw his appeal, since P has no appeal in the Upper Tribunal. In such a situation, the giving of notice under rule 17*

*to withdraw P's case will, if the Upper Tribunal gives consent, have the effect of leaving the Secretary of State's appeal to the Upper Tribunal unopposed and therefore may well lead to a reasoned decision from the Upper Tribunal, setting aside the decision of the First-tier Tribunal.*

8. In a directions notice issued on 9 August 2024, he was directed to confirm whether he consented to the appeal proceeding in his absence and whether he continued to oppose the appeal. No response was received to this direction.
9. In accordance with Ahmed, we treat Mr Daci's notice under rule 17 as having the effect that he does not appeal oppose the Secretary of State's appeal.
10. Mr Daci was manifestly aware that the hearing was taking place. He had been notified of the time and place of the hearing. He did not make an application to adjourn the hearing. He is in Albania and was not able to attend in person which explains his absence. He did not instruct a representative to attend on his behalf. From his withdrawal notice, it was clear that he did not seek to proceed with the appeal. Further he has been informed on several occasions in directions from this Tribunal that, considering Celik v SSHD [2024] 1 W.L.R. 1946, his appeal had little prospect of success. We found at the hearing that Mr Daci neither opposed the hearing proceeding in his absence nor that the decision of Judge Mill involved the making of an error of law. We indicated that we were minded to allow the Secretary of State's appeal and would set aside the decision of Judge Mill and remake it in a reserved decision.

### **Ground of Appeal - 'Relevant Document' and Celik**

11. We are satisfied that the decision involved the making of an error of law when seen against the now settled legal position adopted in Celik before the Upper Tribunal, as subsequently endorsed by the Court of Appeal in Celik v SSHD [2024] 1 W.L.R. 1946. It is now clear that the appeal could not succeed on a proper application of the plain words of Appendix EU because the rules required Mr Daci to have a 'relevant document'. It is uncontroversial that he has never had such a document. These authorities also establish that the Withdrawal Agreement does not confer substantive or procedural rights on a person in Mr Daci's position. While he was found to be in a committed long-term relationship with a relevant EU citizen, he was not a spousal 'family member' and his presence in the UK was not being facilitated by the UK authorities with the issue of a 'relevant document'.
12. Judge Mill, at [18]-[19], found that the Secretary of State was under a duty to provide Mr Daci with a 'relevant document' in keeping with Article 18 of the Withdrawal Agreement. This finding is irrational and unlawful when measured against the legal framework as clarified in the Celik line of authorities.

### **Decision on Error of Law**

13. We set aside the judge's decision because it plainly involved the making of a material error of law. Mr Daci required a 'relevant document' to come within the scope of the Withdrawal Agreement and meet the eligibility requirements of the EUSS. On these facts, given the clarification of the law in the Celik line of authorities, Mr Daci could not lawfully succeed in his appeal.
14. We preserve the findings at [2] (a) to (d) above.

**Disposal**

15. Mr Terrell invited us to re-make the appeal immediately without a further hearing. We were satisfied that it was appropriate and in the interests of justice to re-make the decision immediately because there was no need for a fact-finding process in circumstances where the Secretary of State did not seek to go behind the factual matrix relied upon by Mr Daci and because of the scope of the narrow legal question to be resolved.

**Re-making Decision**

16. The reasoning which underpins our decision to set aside the decision of Judge Mill applies with equal force to the final disposal of the appeal. On the undisputed facts, and applying the guidance in Celik, the applicant simply cannot succeed. Without a 'relevant document', he did not qualify under the terms of the EUSS as set out in Appendix EU. Further, he did not fall within the personal scope of the Withdrawal Agreement because his presence in the UK was not facilitated by the UK authorities by the issue of a 'relevant document'.
17. We find that there can only be one outcome to the appeal brought under the 2020 Regulations. The appeal must be dismissed.

**Notice of Decision**

18. The decision of the judge is set aside because it involved a material error of law. The decision is remade.
19. On re-making, the appeal against the decision of the Secretary of State, dated 13 October 2021, is dismissed under regulation 8(2) and 8(3) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 because the decision did not breach Mr Daci's rights under the Withdrawal Agreement and the decision was in accordance with the applicable Immigration Rules.

**P S Lodato**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**13 August 2024**