



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

**Case No: UI-2022-  
003369**  
**First-tier Tribunal No:  
EA/03088/2022**

**THE IMMIGRATION ACTS**

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

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**SOTIR KALIVAC  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Alvarez

For the Respondent: Ms Newton, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 12 August 2024

**DECISION AND REASONS**

1. Upper Tribunal Judge Gleeson made case management directions in this appeal on 15 April 2024 as follows:

The appellant is a male citizen of Albania, who appealed to the First-tier Tribunal against the Secretary of State's decision on 19 November 2021 to refuse to grant him settled status under the EU Settlement Scheme (EUSS) and Appendix EU of the Immigration Rules HC 395 (as amended). The First-tier Tribunal allowed the appeal. The First-tier Tribunal granted the Secretary of State permission to appeal to the Upper Tribunal.

It is common ground that the claimant and his partner did not marry until after the specified date of 11 p.m. on 31 December 2020. The date of the marriage

was 1 March 2021 and the application for an EUSS permit was made on 18 May 2021.

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It is my provisional view that the Secretary of State's grounds of appeal asserting an error of law by the First-tier Tribunal are bound to succeed.

2. The appellant attended the hearing at Manchester with his partner. He was represented by Ms Alvarez who appeared remotely via CVP. Ms Newton, Senior Presenting Officer, appeared for the Secretary of State. Both representatives made submissions and I reserved my decision.
3. As Upper Tribunal Judge Gleeson observed, the facts of the appellant's appeal fall squarely within the parameters of *Celik v Secretary of State for the Home Department* [2023] EWCA Civ 921. Ms Alvarez told me that, notwithstanding the judgment in *Celik*, the appellant wished to continue his appeal on Article 8 ECHR grounds. She submitted that the appellant and his partner had been and remained in a durable relationship and would have married sooner but for delays caused by the pandemic.
4. The Court of Appeal at [71-72] of *Celik* noted the appeal before it on ECHR grounds and wrote:
  71. The short answer to this point [reliance on the ECHR] is that the question on this appeal is whether the appellant was entitled under the terms of the Withdrawal Agreement to reside in the United Kingdom after the end of the transition period. That turns on the proper interpretation of Article 10(1)(e)(i) and whether the appellant was a family member of an EU national before the end of the transition period. He was not. Articles 7, 9 and 41 of the Charter do not require the Withdrawal Agreement to be interpreted as if he had a status, and was entitled to rights, which he did not have.
  72. Similarly Article 8 of the Convention does not assist in interpreting the scope of the Withdrawal Agreement and determining the rights granted by that Agreement. Issues under Article 8 of the Convention may arise when the respondent is considering relevant decisions under the Immigration Rules. When taking such decisions, the respondent would be under a duty under section 6 of the Human Rights Act 1998 to act compatibly with any such rights. In fact, we were told that, subsequent to the Upper Tribunal hearing, the appellant did apply for leave under Appendix FM of the Immigration Rules and limited leave to remain was granted. The appellant at present remains with his wife in the United Kingdom. There does not, at present, appear to be any arguable case that there is any breach of Article 8 of the Convention.
5. As in *Celik*, the question here is whether the appellant was 'entitled under the terms of the Withdrawal Agreement to reside in the United Kingdom after the end of the transition period.' Given the chronology set

out by Judge Gleeson and which the appellant does not dispute, the appellant had no entitlement to status under the Withdrawal Agreement. As a consequence, Article 8 ECHR does not provide him with an alternative remedy. He may make a fresh human rights application regarding his relationship with his partner (as Mr Celik did, with success), but that is a matter for him and his advisers.

### **Notice of Decision**

The First-tier Tribunal erred in law such that its decision falls to be set aside. I set aside the First-tier Tribunal's decision and remake the de. I dismiss the appellant's appeal against the decision of the Secretary of State dated 19 November 20221.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 12 August 2024**