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

Case No: UI-2022-003418

First-tier Tribunal No: EA/12782/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 20th of March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

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

Appellant

**and**

**NIN RAJTA**
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: None

**Heard at Field House on 17 January 2024**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Iqbal ("the judge") allowing the appeal of Mr Rajta against the respondent's decision to refuse his application under the EU Settlement Scheme (EUSS) as the spouse of a relevant EEA citizen.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Rajta as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant, a national of Albania born on 16 November 1990, made an application under the EUSS as the spouse of his Greek national wife with whom he had commenced a relationship in early 2020 and married on 13 May 2021 (not April 2021 at [25]). His application was refused by the respondent on 26 August 2021. The respondent considered that the requirements of

Appendix EU of the Immigration Rules were not met as the appellant had not provided sufficient evidence to confirm that he was a family member of a relevant EEA citizen prior to 31 December 2020 ("the specified date"). His marriage took place after the specified date. The required evidence of family relationship as a durable partner was a valid family permit or residence card issued under the EEA Regulations. The respondent had no record of the appellant having been issued with such a document. It was considered by the respondent that the appellant therefore qualified for neither settled nor pre-settled status under the EUSS.

4. The appellant appealed against that decision and his appeal came before the judge on 6 May 2022. The parties were represented by Counsel. The appellant's Counsel accepted the appellant had not been issued with a family permit or residence card under the EEA Regulations. The judge heard evidence from the appellant only. The appellant's spouse did not attend for reasons that are unclear. Essentially, the appellant's case was that he would have married his wife before the specified date but was unable to do so because of the pandemic. His relationship was genuine and durable and the situation he found himself in was no fault of his own.

5. The judge noted that the genuineness and/or the validity of the marriage was not in dispute, and neither was it disputed that the couple commenced a relationship in 2020 and that the marriage had taken place after the specified date. The judge noted that the appellant appeared to accept that he could not meet Appendix EU of the Immigration Rules since his marriage had taken place after the specified date, and she then proceeded to consider the terms of the Withdrawal Agreement.

6. The judge found the appellant and his spouse fell within the scope of Article 10 and noted *inter alia* that the respondent failed to safeguard the rights of the appellant's spouse as an EEA citizen who was resident in the UK prior to the specified date, and that, prior to that date, the appellant and his spouse gave notice of their intention to marry, a marriage which was only delayed due to the pandemic. The judge found that the respondent's refusal of the application was a disproportionate interference with the appellant's and his spouse's rights and fundamental freedoms under EU law and that the respondent was therefore in breach of the Withdrawal Agreement, with specific reference to Article 18. The judge allowed the appeal on that basis.

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the grounds that the judge had made a material misdirection in law and had erred in law by allowing the appeal.

8. Permission was granted by the First-tier Tribunal on 6 July 2022.

9. The appeal first came before Deputy Upper Tribunal Judge Chamberlain on 3 October 2023. Judge Chamberlain acceded to the appellant's application dated 2 October 2023 to adjourn on the basis that his newly appointed representatives were not able to proceed with the hearing. Judge Chamberlain directed the appellant to provide a Rule 24 response by 25 October 2023 setting out his case by reference to the judgement in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921. The appellant did not comply with that direction and his representatives came off the record on 4 January 2024.

10. The matter then came before me. The appellant did not appear at the hearing. I was satisfied the Notice of Hearing specifying the date, time and venue of the hearing had been effectively served on the appellant. There was no explanation for the appellant's absence and no application to adjourn. I considered the procedural history, the appellant's failure to comply with directions which demonstrated a failure to engage with the proceedings, and the law as it stands, which is that the appeal by the Secretary of State is bound on the law to be successful. In the circumstances, I considered that it was in the interests of justice to proceed with the hearing.

11. On behalf of the respondent, Mr Lindsay relied on the respondent's grounds of appeal. He submitted that there was an error of law following the Court of Appeal's decision in Celik (supra). The appellant married after the specified date, and it was accepted the appellant did not have a relevant document. The appellant could not rely on the Withdrawal Agreement as his residence was not being facilitated. The rights of the appellant's spouse were not a relevant consideration and there was no legal provision that would bring her rights into play in this jurisdiction.

## Discussion

12. Dealing very briefly with the law, this case is governed by the case of Celik in which the Court of Appeal confirmed that this Tribunal's decision in Celik (EU exit, marriage, human rights) [2022] UKUT 00220 (IAC) was correct. The decision of the judge was made before these cases were decided and she did not therefore have the benefit of the guidance given therein.

13. It is not in dispute the appellant was not a family member at the material time. He had not married an EEA citizen before the specified date. He was not a durable partner within the meaning of Annex 1 to Appendix EU of the Immigration Rules as he did not have a residence card as required and he did not have a lawful basis of stay in the United Kingdom. The appellant therefore did not qualify for leave to remain under Appendix EU.

14. Likewise, and for the same reasons, the appellant cannot show that he falls within the personal scope of the Withdrawal Agreement as the 'family member' of an EEA citizen, under Article 10(1)(e)(i). In order to do so he would have to show that he was the family member of a Union citizen who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continued to reside there thereafter, which he clearly could not do. I agree with the respondent's grounds that the judge appears to implicitly accept the appellant does not fall within the personal scope of the Withdrawal Agreement at [29] – [30], and that, at [26]–[32], she went beyond the statutory framework to which she was confined in considering the appeal under regulation 8(2) of The (Immigration Citizens' Rights Appeals) (EU Exit) regulations 2020), which concern grounds relating to the rights of the appellant and not his spouse. The judge accordingly erred in law.

15. The appellant has not taken the opportunity afforded to him to submit a response in his defence of the judge's decision, but even if he had done so, it was unlikely to assist given his circumstances are on all fours with the appellant in Celik. Accordingly, there being no basis upon which to distinguish

this appellant's case from Celik, Judge Iqbal's decision cannot stand and must be set aside.

16. In re-making the decision in the appellant's appeal against the respondent's decision, the appeal is, for the same reasons, bound to fail. The decision must therefore be re-made by dismissing the appeal.

**Notice of Decision**

The Secretary of State's appeal having been allowed and the decision of the First-tier Tribunal having been set aside, the decision is re-made by dismissing the appellant's appeal.

**R Bagral**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 February 2024