IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003724

First-tier Tribunal No: EA/15035/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 January 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

PUSHTRIG BEGU
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Jones, of Counsel, instructed by Briton Solicitors
For the Respondent: Ms Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 10 January 2024

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born on 6th October 1988. He applied to remain as the durable partner of an EEA citizen, Ms Beata Petras, a citizen of Romania with pre-settled status in the UK under the EU settlement scheme. The application was refused on 1st February 2021. His appeal against the decision was allowed by First-tier Tribunal Judge EM Field in a determination promulgated on the 8th June 2022.

2. Permission to appeal was granted to the Secretary of State by Judge of the First-tier Tribunal LK Gibbs on 3rd August 2022. On 14th April 2023 Upper Tribunal Judge Mandalia found that the decision of the First-tier Tribunal should be set aside due to a material error of law for the reasons set out in his decision which is appended to this decision at Annex A. Judge Mandalia ordered that the remaking would take place on the basis that the appellant had made a valid application in December 2020 under the 2016 EEA Regulations, and with a direction that the

Secretary of State should confirm to the appellant and the Upper Tribunal whether the application made by the appellant in December 2020 remains outstanding.

3. On 17th July 2023 the remaking of the appeal was stayed pending a decision of the Court of Appeal in Celik v SSHD by Upper Tribunal Judge Mandalia in directions which reminded the Secretary of State of the outstanding directions relating to the 2016 EEA Regulations application.

4. On 13th July 2023 A Nolan for the Secretary of State submitted that if a valid application remained outstanding with the Secretary of State it would be dealt with and there would be an appeal against any refusal and it was of no relevance to this appeal. It was argued that it was a mistake for the First-tier Tribunal to have found that the email of 26th March 2021 related to the application made under the EEA Regulations 2016, when in fact it was with respect to the application made under Appendix EU as per the cited subject of the Email "Your EU Settlement Application (UAN-3434-0634-4896-5373). In a further position statement from the Secretary of State dated 10th August 2023 reliance was placed on the decision of the Court of Appeal in Celik v SSHD [2023] EWCA Civ 192 in arguing that Article 10(3) cannot assist the appellant because his residence has not been facilitated, and is not being facilitated as there has been no grant of an application for a residence card made prior to 31st December 2020. As a result, it is argued, the appeal could not succeed under the EEA Regulations or the Withdrawal Agreement. However it is also noted that the appellant's outstanding 2016 EEA Regulations application was with a team and an decision was expected by 18th August 2023.

5. On 5th September 2023 Upper Tribunal Judge Mandalia issued directions that the appeal should be listed after 13th November 2023 to give the respondent time to make a decision on the extant application under the 2016 EEA Regulations as unfortunately a decision had still not been made.

6. On 5th October 2023 the Secretary of State accepted in writing that the appellant would have qualified for a residence document if the scheme had not been discontinued, but said that he could make a new application under the EU Settlement Scheme for no charge submitting this letter and arguing that there were reasonable grounds for his having missed the 30th June 2021 deadline.

7. The matter came before me pursuant to a transfer order to remake the decision.

8. Ms Gilmour and Ms Jones had helpfully had a discussion before the hearing started, and informed me that the appeal was conceded by the respondent on the basis that the appellant was entitled to succeed on the basis of Celik. The appellant had not as yet made a new application as outlined in the letter of 23rd October 2023, but would consider whether such an application might progress matters practically. Ms Jones pointed out that this was a Secretary of State's appeal and said that as a result her solicitors had written to the respondent on a number

of occasions since October 2023 suggesting that the appeal should be withdrawn as it was bound to fail but had received no response. As a result she asked that directions should be made with a view to a possible wasted costs order against the respondent. Ms Gilmour was without instructions on this issue, but agreed to the making of directions.

Conclusions – Remaking

9. The appeal is allowed by consent on the basis that the acceptance by the respondent that the appellant would have been entitled to facilitation as an extended family member and a residence document had the scheme not been ended due to Brexit entitled him to succeed in accordance with the decision of the Upper Tribunal upheld by the Court of Appeal in Celik.

10. In the circumstances outlined by Ms Jones it is appropriate to make directions for the consideration on the papers of whether it is appropriate to make a wasted costs order against the respondent.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The decision of the First-tier Tribunal allowing the appeal was set aside by Upper Tribunal Judge Mandalia on 14th April 2023
3. I re-make the decision in the appeal by allowing it.

Directions:

1. The appellant has 14 days from the date this decision is sent to file with the Upper Tribunal and serve on the respondent submission on wasted costs limited to two sides of A4.
2. The respondent has 14 days from the date the appellant's submissions are received to file with the Upper Tribunal and serve on the appellant costs submissions in response limited to two sides of A4.
3. A decision will be made by an Upper Tribunal Judge on the papers on receipt of any submissions.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10th January 2024

Annex A: Error of Law Decision of Upper Tribunal Judge Mandalia

DECISION AND REASONS

1. The appellant is a national of Albania. On 21st April 2021, the respondent refused his application made under the EU Settlement Scheme. The appellant's appeal against that decision was allowed by First-tier Tribunal Judge Field for reasons set out in her decision promulgated on 8th June 2022.

2. It was uncontroversial before the First-tier Tribunal that the appellant and sponsor, Ms Beata Petras, have been living in a relationship akin to marriage for at least two years. Judge Field noted that the appellant and sponsor began living together in 2016. She found the appellant and sponsor to be entirely credible and was satisfied that the appellant was living with the sponsor as the durable partner of an EEA citizen on 31 December 2020 and continued to do so. She noted however the requirement in Annex 1 of Appendix EU that the definition of "durable partner" requires a person to have a "relevant document". That is, the appellant is required to have a document issued under the 2016 Regulations confirming his status as the durable partner of the sponsor prior to the specified date. It is accepted that the appellant does not have such a relevant document.

3. Judge Field noted, at [27], that the appellant had made an application as a durable partner under the Regulations in December 2020, prior to the specified date. Unfortunately, as confirmed in the letter from the respondent of 1st February 2021, the appellant's application was rejected because "the specified fee has not been paid… Although credit/debit card details have been provided, the issuing bank rejected the payment". Judge Field noted, at [28], that since the appellant was not notified that his application had been rejected until after the specified date, he was not able to resubmit his application under the Regulations.

4. Judge Field considered the evidence before the Tribunal and concluded, at [33], that she was satisfied that a valid application was made by the appellant under the Regulations. She noted that, notwithstanding that the respondent had encountered a problem processing payment of the application fee on 14th December 2020, the respondent wrote to the appellant via email on 17th December 2020 confirming receipt of the application and that it was being considered. The respondent did not take the opportunity to inform the appellant that there had been an issue with taking payment of the application fee or give any indication that there was any issue with validity of the application. Judge Field noted there was no evidence before the Tribunal of any attempt to notify the appellant or the sponsor that there had been an issue with payment of the fee prior to the decision letter of 1st February 2021, by which time it was no longer possible for the appellant to resubmit a new application under the Regulations. She found that the appellant was unfairly denied the opportunity to rectify the situation which adversely affected his application under Appendix EU of the Immigration Rules.

5. In any event, Judge Field noted the appellant's appeal is against the decision made in respect of the appellant's later application under Appendix EU. To that end she noted, the fact remains that the appellant was not issued with a residence card and as such, does not have a relevant document as required under Appendix EU of the Immigration Rules. She went on to address the Withdrawal Agreement. At paragraph [36], she said: "…I find that the Appellant did apply for facilitation of residence before the end of the transition period by virtue of his application under the Regulations and I further find on the evidence before me that but for the non-processing of the application fee, his ongoing residence in the UK would have been facilitated. I also find that the current application under Appendix EU is an application for facilitation of his residence in accordance with national legislation after the transition period…"

6. Judge Field considered Article 18 of the Withdrawal Agreement and at paragraphs [39] and [40] of her decision, she concluded: “39. As set out above, I have found that the Appellant was, as a matter of fact, a durable partner of a relevant EEA citizen as at 31 December 2020. In this case, I find that the additional requirement for a specified document interferes with a primary aim of the WA. I accept that had the Appellant been notified promptly of the payment issue, he or the Sponsor would have rectified the issue and he would have been issued with a relevant document under the Regulations which, in turn would have resulted in his application under the EU Settlement Scheme being successful. I am not satisfied that the appropriate, extensive examination was given to the specific facts relating to the Appellant and his Sponsor and accordingly find that the Respondent’s decision was disproportionate. As such it breaches the WA. 40. Overall, taking into account all the circumstances of this case, I find that to refuse the Appellant status under the EU Settlement Scheme is disproportionate and thus breaches the Withdrawal Agreement. I therefore allow this appeal.”

7. The respondent claims Judge Field materially erred in finding that the respondent’s decision was not in accordance with the Withdrawal Agreement, and that the appellant was accorded any applicable rights under the agreement. The respondent claims the Withdrawal Agreement provides no applicable rights to a person in the appellant’s circumstances. Beneficiaries are those who were residing in accordance with EU law as at 31 December 2020. The respondent claims that here, there was no entitlement to the full range of judicial redress including the Article 18(1)(r) requirement that the decision was proportionate. The respondent claims Judge Field materially erred in concluding at paragraph [36] that but for the non processing of a fee, the appellant’s residence in the UK would have been facilitated. The respondent claims that conclusion is entirely speculative. Regulation 17 of the 2016 EEA Regulations simply provides the respondent may issue a registration certificate to an extended family member. An extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State. The respondent claims the decision as to whether or not to issue a Residence Card lies solely with the Secretary of State and Judge Field was wrong to conclude that the granting of a Residence Card to the appellant was inevitable simply because the appellant is in a durable relationship.

8. The respondent also claims Judge Field erred in her conclusion that a valid application was made by the appellant under the 2016 EEA Regulations. The respondent claims Judge Field failed to have regard to the decision of the Upper Tribunal in Mitchell (Basnet revisited) 2015 UKUT 562. The Upper Tribunal drew attention to the material before the Tribunal in relation to the Secretary of State's accounting processes. The Tribunal noted there may be a number of reasons why a payment might be declined, including insufficient funds, exceeding the maximum transaction limit or the number of transactions permitted, incorrect card number, or failure to indicate the amount to be taken. The payment pages are stored at the payment processing centre for eighteen months from the date of receipt. The Tribunal said that generally speaking, the Secretary of State will be in a position, within eighteen months, to demonstrate that the payment was not taken. Further, an applicant will be able to obtain the payment page within that period. It goes without saying also, of course, that an applicant can take up the matter with his or her bank without involving the Secretary of State at all. Here, the respondent claims the appellant provided no evidence regarding the reasons for the payment being declined and has taken no steps to obtain any of the relevant evidence referred to in Mitchell to support his claim that the payment mandate was completed correctly.

9. Before me, Mr Walker submits that at paragraph [28] Judge Field refers to the evidence relied upon by the appellant regarding payment of the relevant fee. Judge Field had before her, a copy of the visa debit receipt from the Home Office Government Banking Services (page 96 Appellant’s bundle). That showed that an

attempt was made to process payment of the £65 application fee at 08:38 on 14th December 2020. The receipt records that the customer was not present, and that the transaction was “Not Authorised”. He submits Judge Field erred in concluding that a valid application was made by the appellant. As the Tribunal accepted in Mitchell, there may be a number of reasons why a payment might be declined.

10. In any event, Mr Walker submits Judge Field erred in reaching her conclusion that but for the non-processing of the application fee, the appellant’s ongoing residence in the UK would have been facilitated by the respondent. He submits that a valid application requires an extensive examination of the personal circumstances of the applicant and the conclusion that the application would have been granted is nothing more than speculation. As there was no valid application supported by evidence that the appellant’s residence was being facilitated by the respondent prior to 31 December 2020, the appeal could not succeed.

11. In reply, Ms Jones adopts her skeleton argument dated 8th November 2022. She submits Judge Field properly noted there were no factual disputes. The judge was satisfied that the appellant made a valid application as a durable partner under the Regulations in December 2020, prior to the specified date. Ms Jones submits that in Celik, the Tribunal was concerned with an appellant who had not made an application before 11pm on 31st December 2020. At paragraph [63] and [64] of its decision, the Upper Tribunal said: “63. The nature of the duty to ensure that the decision is not disproportionate must, however, depend upon the particular facts and circumstances of the applicant. The requirement of proportionality may assume greater significance where, for example, the applicant contends that they were unsuccessful because the host State imposed unnecessary administrative burdens on them. By contrast, proportionality is highly unlikely to play any material role where, as here, the issue is whether the applicant falls within the scope of Article 18 at all.” 64. In the present case, there was no dispute as to the relevant facts. The appellant’s residence as a durable partner was not facilitated by the respondent before the end of the transitional period. He did not apply for such facilitation before the end of that period. As a result, and to reiterate, he could not bring himself within the substance of Article 18.1.” [appellant’s emphasis]

12. Ms Jones submits the crucial issue here and what distinguishes the appellant’s case from the decision in Celik is that here, on the facts found, the appellant did apply for facilitation before the specified date. The judge properly noted the appellant did not have a relevant document and, was mindful that the appellant had no right of appeal against the decision to refuse his application under the Regulations. She noted the appellant’s appeal is against the later application under Appendix EU. Judge Field carefully considered the Withdrawal Agreement. At paragraph [36], she found the appellant did apply for facilitation of residence before the end of the transition period by virtue of his application under the 2016 Regulations and that but for the non-processing of the application fee, his ongoing residence in the UK would have been facilitated. She also found the application under Appendix EU is an application for facilitation of his residence in accordance with national legislation after the transition period. Article 10(5) of the Withdrawal Agreement requires the respondent to undertake an extensive examination of the personal circumstances of the appellant when considering any application. Here, Judge Field was not satisfied that the respondent has had appropriate regard to the circumstances surrounding the appellant’s earlier application under the Regulations, when considering his application under the EU Settlement Scheme.

13. Ms Jones submits that although the decision of Judge Field pre-dates the decision of the Upper Tribunal in Celik, it is clear that the appellant could bring himself within the substance of Article 18(1) and that it was open to the Judge to allow the appeal for the reasons given by her.

14. It is common ground that the appellant had made an application in December 2020 for a residence card as the unmarried partner of an EEA national under the EEA Regulations 2016. The appellant was notified by a letter dated 1st February 2021 that his application had been rejected because the specified fee was not paid. The letter stated that although credit/debit card details had been provided, the issuing bank rejected the payment.
15. The appellant did not challenge the respondent's decision to reject the application made under the EEA Regulations 2016. Instead, he applied for applied for status under Appendix EU of the Immigration Rules and received a certificate of application confirming receipt of his application on 13th April 2021. It was the refusal of that application that gave rise to a right of appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, and led to the decision of Judge Field.
16. In the run up to the United Kingdom's exit from the European Union on 31 December 2020, applications could be made to recognise existing rights of residence or to facilitate entry or residence under the EEA Regulations 2016. A right of appeal against a decision to refuse a residence card arose under the EEA Regulations 2016. The EU Settlement Scheme was designed as a mechanism to regularise the status of those who were remaining under EU law at the end of the transition period. A right of appeal against a decision to refuse leave to enter or remain under the immigration rules arose under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.
17. There has always been a distinction under EU law between the rights of residence of 'family members' and the need for 'other family members' to apply for entry or residence to be facilitated by the host state in accordance with national legislation. In Rahman [2013] QB 249 (C-83/11), the Court of Justice of the European Union (CJEU) reiterated that Article 3(2) did not oblige a Member State to accord a right of residence to other family members. It held that the Member States must, in accordance with the second subparagraph of Art.3(2) of Directive 2004/38, make it possible for persons envisaged in the first subparagraph of art.3(2) to obtain a decision on their application that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons. 18. In Celik (EU exit; marriage; human rights) [2022] UKUT 00220 (IAC), the appellant's residence in the UK was not facilitated by the respondent before the end of the relevant transition period, nor did he apply for such facilitation. The Tribunal held that there could be no doubt that the appellant's residence in the United Kingdom was not facilitated by the respondent before 11pm on 31 December 2020. It was not enough that the appellant may, by that time, have been in a durable relationship with the person whom he married in 2021. At paragraph [53], the Tribunal said: "If the appellant had applied for facilitation of entry and residence before the end of the transition period, Article 10.3 would have brought him within the scope of that Article, provided that such residence was being facilitated by the respondent "in accordance with … national legislation thereafter". This is not, however, the position. For an application to have been validly made in this regard, it needed to have been made in accordance with regulation 21 of the 2016 Regulations. That required an application to be submitted online, using the relevant pages of www.gov.uk, by post or in person, using the relevant application form specified by the respondent; and accompanied by the applicable fee."
19. In Batool & Ors (other family members: EU exit) [2022] UKUT 00219 (IAC), the Upper Tribunal confirmed: Appeal Number: UI-2022-003724 6 "(1) An extended (oka other) family member whose entry and residence was not being facilitated by the United Kingdom before 11pm GMT on 31 December 2020 and who had not applied for facilitation of entry and residence before that time, cannot rely upon the Withdrawal Agreement or the immigration rules in order to succeed in an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. (2) Such a person has no right to have any application they have made for settlement as a family

member treated as an application for facilitation and residence as an extended/other family member."

20. I reject the claim made by the respondent that Judge Field erred in her conclusion that a valid application was made by the appellant under the 2016 EEA Regulations. The respondent's reliance upon the decision in Mitchell is misplaced. In Ahmed & Ors (valid application – burden of proof) [2018] UKUT 00053 (IAC) the Tribunal noted, at [44], that in Basnet the respondent actually attempted to obtain payment using her payment procedures having received what was, on its face, a completed payment page. It said: "45. Mitchell does not concern the procedure for obtaining payment from a bank, but whether the payment mandate section of the payment page was signed. In contrast with the procedure for obtaining payment from a bank or credit card company, which involves a further process in respect of which an applicant has no involvement and which will only be embarked on if an application appears to be sufficiently completed, there is no further process when determining whether an application is, prima facie, sufficiently completed. 46. We have no hesitation in endorsing the conclusion reached in Mitchell that, if an application is, on its face, insufficiently completed, the burden of proving its validly remains on an appellant. This stands in marked contrast to a situation where an attempt has been made to obtain payment following the provision of complete payment details. Central to the analysis in Basnet is the existence of a further procedure undertaken by the respondent in order to process payment in relation to which applicants are not privy and over which they have no control. As was observed in Mitchell (at paragraph 10), once a postal application is received that is, on its face, sufficiently completed, an applicant's involvement in the payment procedure ends and the matter is solely within the knowledge of the respondent (a point emphasised by McCloskey J in Muhandiramge (section S-LTR.1.7) [2015] UKUT 00675 (IAC)). Applicants have no involvement in attempts to draw payment from a bank or credit card company using the card details provided. Nor are they provided with the payment page of a returned application deemed invalid. As the crucial events happen after the submission of the application form, and as the respondent is the party asserting that the application is invalid because the issuing bank or credit card company rejected payment, and given that only she is privy to and responsible for the actual attempt to draw payment, it remains appropriate for her to bear the burden of proof."

21. Judge Field had the opportunity of hearing from the appellant and his sponsor. She found their evidence to be wholly consistent and she said that they were both open and keen to assist the Tribunal. At paragraph [28] Judge Field noted she did not have a copy of the application form which was submitted or of the relevant payment details provided. She referred to the visa debit receipt from the Home Office Government Banking Services and the evidence relied upon by the appellant confirming that funds were available. It was in my judgment open to Judge Field to find that a valid application was made by the appellant under the 2016 EEA Regulations for the reasons she gave.

22. At paragraph [34], Judge Field reminded herself that the appellant's appeal is against his later application under Appendix EU. She noted that the fact remains that the appellant was not issued with a residence card and as such, does not have a relevant document as required under Appendix EU of the Immigration Rules. She then went on to address the Withdrawal Agreement.

23. Article 10 of the Withdrawal Agreement provides a list of persons to whom Part One of the Withdrawal Agreement applies. It is not necessary to reproduce it in its entirety but I do need to set out Article 10(2)-(5) in full: "(2) Persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC whose residence was facilitated by the host State in accordance with its national legislation before the end of the transition period in accordance with Article 3(2) of that Directive shall retain their right of residence in the host State in accordance with this Part, provided that

they continue to reside in the host State thereafter. (3) Paragraph 2 shall also apply to persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC who have applied for facilitation of entry and residence before the end of the transition period, and whose residence is being facilitated by the host State in accordance with its national legislation thereafter. (4) Without prejudice to any right to residence which the persons concerned may have in their own right, the host State shall, in accordance with its national legislation and in accordance with point (b) of Article 3(2) of Directive 2004/38/EC, facilitate entry and residence for the partner with whom the person referred to in points (a) to (d) of paragraph 1 of this Article has a durable relationship, duly attested, where that partner resided outside the host State before the end of the transition period, provided that the relationship was durable before the end of the transition period and continues at the time the partner seeks residence under this Part. (5) In the cases referred to in paragraphs 3 and 4, the host State shall undertake an extensive examination of the personal circumstances of the persons concerned and shall justify any denial of entry or residence to such persons..”

24. I accept that the purpose of Article 10 is principally to afford some protection to those who had already exercised their right to free movement under the Treaties before the end of the transition period. As is clear from Article 10(5), however, Article 10(3) and 10(4) were also intended to provide some protection for those who had applied for facilitation before the end of the transitional period and had not received a response to that application. Article 10(5) provides that where such an application is made the host State shall undertake an extensive examination of the personal circumstances of the persons concerned and shall justify any denial of entry or residence to such persons.

25. I accept that Judge Field erred in her finding, at [36], that but for the non-processing of the application fee, the appellant’s ongoing residence in the UK would have been facilitated. At paragraph [4] of her decision, Judge Field records: “…Despite the fact that his application for a Residence Card had been rejected, the Respondent’s UKVI European Casework team wrote to the Appellant on 26 March 2021 stating that they were unable to progress his application until a possible criminal prosecution was resolved.”

26. In considering the application, the respondent was required to undertake an extensive examination of the personal circumstances of the appellant. It was not at all clear therefore that if the application had not been rejected because the respondent had been unable to process the fee, that the application would have succeeded.

27. In my judgement, the error was material. At paragraph [39] Judge Field found that had the appellant been notified promptly of the payment issue, he or the sponsor would have rectified the issue and he would have been issued with a relevant document under the Regulations which, in turn would have resulted in his application under the EU Settlement Scheme being successful. I accept the submission made by Mr Walker that the conclusion that the appellant would have been issued with a relevant document is entirely speculative. That was a material factor leading to the conclusion that the appellant can benefit from the Withdrawal Agreement and that the respondent’s decision was disproportionate. Judge Field proceeds upon the premise that the application under the 2016 EEA Regulations was bound to succeed, without having regard to, or addressing the information before her that in any event, the respondent’s UKVI European Casework team wrote to the appellant on 26 March 2021 stating that they were unable to progress his application until a possible criminal prosecution was resolved.

28. It follows that in my judgment, the decision of First-tier Tribunal Judge Field is vitiated by an error of law and must be set aside.

29. As to disposal, I have found it was open to Judge Field to find that the appellant’s application made in December 2020 under the 2016 EEA Regulations was a valid application for the reasons she gave. The appropriate course is for the appeal to be

listed for a resumed hearing before me for the decision to be remade in the Upper Tribunal.

30. At the resumed hearing, the parties will need to address the status of the appellant's application made in December 2020 under the EEA Regulations 2016 in light of the preserved finding that it was a valid application. The respondent will need to confirm whether that application under the 2016 Regulations remains outstanding in light of what I have also recorded at paragraph [25] of this decision.

Notice of Decision

31. The decision of First-tier Tribunal Judge Field is set aside.

32. The decision will be remade in the Upper Tribunal and the matter will be listed for a resumed hearing before me on the first available date after 28 days.

33. I direct that: a. The respondent shall within 14 days confirm in writing to the appellant and the Upper Tribunal whether the application made by the appellant in December 2020 under the 2016 Regulations remains outstanding in light of: i. The preserved finding that the application was a valid application. ii. What I have recorded at paragraph [25] of this decision.

V. Mandalia Upper Tribunal Judge Mandalia Judge of the Upper Tribunal Immigration and Asylum Chamber