



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

**Case No: UI-2022-006354**  
**First-tier Tribunal No:**  
**EA/01135/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MARINGLEN MURATAJ**  
**(Anonymity order not made)**

Respondent

**Representation:**

For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer

For the Respondent: No Appearance

**Heard at Field House on 24 September 2024**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal which allowed the appeal of Mr Murataj against the respondent's decision to refuse his application under the EU Settlement Scheme (EUSS) as the spouse/ durable partner 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 Murataj 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 7 October 1993, made an application under the EUSS as the spouse of his Hungarian national wife with whom he had commenced a relationship in February 2020 and married on 23 March 2021. His application was refused by the respondent on 22 October 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 the specified date, 31 December 2020. 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 First-tier Tribunal Judge Latta on 10 May 2022. The judge accepted that the appellant and his spouse were in a genuine and durable relationship and had been so prior to 31 December 2020. He found that paragraph (b)(ii)(bb)(aaa) of the definition of “durable partner” in Annex 1 of Appendix EU to the immigration rules could be construed to mean that the appellant was able to meet the definition of “durable partner” despite not holding a relevant document or having any lawful basis of stay in the UK and that the appellant therefore met the eligibility requirements for pre-settled status under the EUSS. The judge found, in the alternative, with reference to Article 18(o) and (r), that the respondent’s decision was disproportionate and in breach of the Withdrawal Agreement. He accordingly allowed the appeal.

5. 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 on a material matter and had erred in law by allowing the appeal.

6. Permission was granted by the First-tier Tribunal on 18 November 2022. The appeal was stayed to await the Court of Appeal judgment in the appeal against the Upper Tribunal’s decision in Celik (EU exit, marriage, human rights) [2022] UKUT 220.

7. On 13 October 2023, following the Court of Appeal judgment in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921, directions were issued by the Upper Tribunal for skeleton arguments to be filed and served by the parties addressing the “(aaa)” issue and also considering the judgment in Celik. Both parties filed and served skeleton arguments maintaining the positions already taken on the “(aaa)” issue.

8. The appeal was adjourned on 20 November 2023 on the grounds that a ‘test’ case on the “(aaa)” issue was due to be heard shortly.

9. Further directions were then issued by the Upper Tribunal on 30 July 2024 following the judgement in the case of Hani v Secretary of State for the Home Department Hani (EUSS durable partners: para. (aaa)) [2024] UKUT 68, seeking confirmation from the appellant whether he wished to pursue his case in the light of that judgment.

10. The matter was then listed for a hearing and came before me. The appellant had not responded to the directions of 30 July 2024 and he did not attend the hearing.

11. Mr Terrell submitted that the decisions in Celik and Hani were determinative of the issues in the case and that Mr Murataj’s appeal against the respondent’s decision could not succeed.

12. I agreed with Mr Terrell and advised that, in the circumstances, I would set aside Judge Latta’s decision and re-make the decision by dismissing the appellant’s appeal.

13. The decision in Hani, at headnote (1) states as follows:

“The effect of paragraph (b)(ii)(bb)(aaa) of the definition of "durable partner" in Annex 1 of Appendix EU to the Immigration Rules, as inserted by Statement of Changes HC 813 (from 31 December 2020 to 11 April 2023), is that a person who was in a durable partnership but did not have a "relevant document", and who did not otherwise have a lawful basis of stay in the United Kingdom at the "specified date" of 31 December 2020 at 11.00PM, is incapable of meeting the definition of "durable partner".”

14. That is determinative of the appellant’s case. Judge Latta was clearly in error in finding that paragraph (b)(ii)(bb)(aaa) could be read so as to enable the appellant to meet the definition in Annex 1 of a “durable partner” despite having no lawful basis of stay in the UK and despite having no ‘relevant document’. Accordingly, there being no basis upon which to distinguish this appellant’s case from either Hani or Celik, Judge Latta’s decision cannot stand and must be set aside.

15. 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**

16. The making of the decision of the First-tier Tribunal involved an error on a point of law. The Secretary of State’s appeal is accordingly allowed, and First-tier Tribunal Judge Latta’s decision is set aside.

17. I re-make the decision by dismissing Mr Murataj’s appeal.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

24 September 2024