



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002606
First-tier Tribunal No:
EA/11686/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

LORENC GJATA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tawiah, Counsel instructed by Turpin Miller LLP, Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 26 September 2022

DECISION AND REASONS

1. This is an appeal by a citizen of Albania against the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent to refuse him permission to remain in the United Kingdom under the European Union Settlement Scheme (EUSS) under Appendix EU of the Immigration Rules.
2. The First-tier Tribunal's decision was promulgated on 3 February 2022. Unlike the judge in the First-tier Tribunal I have the benefit of the decision of this Tribunal in **Celik (EU exit; marriage; human rights) [2022] UKUT 2020 (IAC)**.
3. It is apparent from reading this decision, which I regard as authoritative and which reasons I respectfully adopt, that the application could not succeed and the judge was right to refuse it.

4. The thrust of the criticism is that the judge did not engage with evidence of the allegedly durable relationship the appellant enjoyed with an EEA national. The problem with this argument is that the appellant had to do more than that to satisfy the requirement of the Rules. In order to meet the requirement of the Rules, the appellant had to be “facilitated” and without that criteria the Rules could not be met. This is explained particularly clearly at paragraph 52 of **Celik** where the Tribunal said:

“There can 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. Unlike spouses of EU citizens, extended family members enjoyed no right, as such, of residence under the EU free movement legislation. The rights of extended family members arose only upon their residence being facilitated by the respondent, as evidenced by the issue of a residence permit, registration certificate or a residence card: regulation 7(3) and regulation 7(5) of the 2016 Regulations.

5. This appellant is not such a person and did not meet the requirements of the Rules. It follows that any error in the assessment of proportionality or taking points on proportionality without notice are immaterial. The fundamental problem is the appellant did not meet the requirement of the Rules and there is no area of discretion or other point that could be considered. It follows that although I have read the skeleton argument before me and listened to Counsel I can see no answer to this fundamental objection and indeed none was given when the matter was raised in the hearing room.
6. It follows I find no material error of law and I dismiss the appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 February 2023