



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

Case No: UI-2022-002848

FTT No: EA/14203/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 22 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**ANDRESSA MARIA LADEIA SOUSA**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Bates, Senior Presenting Officer

For the Respondent: In person

Heard at Manchester Civil Justice Centre on 16 August 2023

**DECISION AND REASONS**

1. I shall refer to the 'appellant' as the 'respondent' and the 'respondent' as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant is a citizen of Brazil, born on 24 April 1997. She appealed against a decision of the respondent dated 18 September 2021 to refuse her application for status under the EU Settlement Scheme (EUSS), whether under EU11 (Settled Status) or EU14 (Pre-Settled Status). The First-tier Tribunal allowed her appeal and the Secretary of State now appeals, with permission, to the Upper Tribunal.
2. As I explained to the appellant and her partner at the initial hearing, the law concerning cases such as hers has now been clarified in the Upper Tribunal and also, very recently, the Court of Appeal. The headnote in *Celik [2022] UKUT 220 (IAC)* reads:

*(1) A person (P) in a durable relationship in the United Kingdom with an EU citizen has as such no substantive rights under the EU Withdrawal Agreement, unless P's entry and residence were being facilitated before 11pm GMT on 31 December 2020 or P had applied for such facilitation before that time.*

*(2) Where P has no such substantive right, P cannot invoke the concept of proportionality in Article 18.1(r) of the Withdrawal Agreement or the principle of fairness, in order to succeed in an appeal under the Immigration (Citizens' Rights) (EU Exit) Regulations 2020 ("the 2020 Regulations"). That includes the situation where it is likely that P would have been able to secure a date to marry the EU citizen before the time mentioned in paragraph (1) above, but for the Covid-19 pandemic*

3. The Court of Appeal upheld the Upper Tribunal's decision (see *Celik* [2023] EWCA Civ 921). As the appellant's entry to the United Kingdom had not been facilitated by the issue to her of a residence card before 31 December 2020, she enjoyed no substantive rights under the Withdrawal Agreement and the judge should not have allowed her appeal. Given that the primary facts are not in dispute, it follows that I should set aside the judge's decision and remake the decision dismissing the appeal.
4. I have said, however, that the facts are not in dispute. Those facts include the finding of the First-tier Tribunal judge (which the Secretary of State does not dispute) at [12] that the appellant and her partner have been in a stable and durable relationship since November/December 2017. That fact should form the basis of the consideration of any future human rights application which the appellant may seek to make to the Secretary of State.

### **Notice of Decision**

The Secretary of State's appeal is allowed. I set aside the decision of the First-tier Tribunal. I remake the decision dismissing the appeal against the Secretary of State's decision dated 18 September 2021.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 16 August 2023**