



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

Case No: UI-2022-005291

First-tier Tribunal No:  
EA/01268/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 22<sup>nd</sup> of December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**ARJAN BRAHA  
(NO ANONYMITY ORDER MADE)**

**Appellant**

**and**

**The Secretary of State for the Home Department**

**Respondent**

**Representation:**

For the Appellant: Mr Nafis Ahmed, Solicitor, Evolent Law.

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer.

**Heard at Field House on 6 November 2023**

**DECISION AND REASONS**

1. This is my decision which I delivered orally at the hearing.
2. No anonymity order has been made and I do not see any reason to anonymise this decision when taking into account the principle of open justice.

**Background**

3. This appeal relates to an EU Settlement Scheme application by the Appellant.

### **First-tier Tribunal's Decision**

4. The matter had come for hearing before First-tier Tribunal Judge Rose ("the Judge") sitting remotely at the Birmingham Justice Centre on 27 July 2022.
5. The Judge had considered the Appellant's application as a partner of Ms Vasiliki Kefala, a Greek national who is permanently resident in the UK. The judge concluded at paragraphs 11 and 12 of his decision that the couple were in a durable relationship and had been married as claimed by them.
6. The Judge went on to consider at paragraph 12 whether the Appellant's appeal could succeed because were it not for the COVID restrictions the likelihood was that the Appellant and the Sponsor would have undergone a civil ceremony of marriage prior to the expiry of the EU Settlement Scheme. The Judge said at paragraph 15 as follows:

*"15. My reading of Paragraph 11 - and specifically condition 1 - is that it makes clear that it is not just a durable relationship that is required but that the Appellant also requires a documented right of permanent residence, i.e. a residence card. I recognise that, without getting married, the Appellant could not get such a card and I acknowledge that it was no fault of his, nor any reflection on the state of his relationship with his Sponsor, that they had not married at the time of the Appellant's application. Nevertheless, the wording of condition 1 is quite clear that such a documented right is a condition precedent to an application being granted. It follows that, regrettably, this appeal cannot succeed."*

### **Appellant's Appeal**

7. The Appellant was granted permission to appeal by First-tier Tribunal Judge Oxlade by way of a decision dated 3 October 2022. The Appellant's single ground of appeal contends that an error of law is said to arise as follows:

*"13. It is submitted that the above provision should be construed to mean that an appellant can satisfy the definition of durable partner if he was present in the UK before the specified date and had a durable relationship, but did not hold a relevant document or lawful basis of stay."*

14. *It is submitted that the appellant was resident in the UK but did not have a relevant document and neither did he have lawful basis of stay in the UK. Therefore, he satisfies the §(b)(ii)(bb) (aaa).*
15. *Therefore, it is submitted that the IJ made a material error of law by misinterpreting the definition of Durable Partner."*

### **Submissions Before Me**

8. In focused submissions today Mr Ahmed submitted on behalf of the Appellant that the Judge at paragraph 12, had made a finding that the Appellant and Sponsor were in a durable relationship at the time of the application. However at paragraphs 14 and 15 the Judge had said that the Appellant could not satisfy the durable partner requirements under the Rules. Permission to appeal was sought on the basis that Appendix EU had been considered erroneously.
9. Mr Ahmed said that in granting permission FTT Judge Oxlade had said it was not clear if the argument had been put forward before FTT Judge Rose. Mr Ahmed pointed out that the argument had been raised and it had been set out in the skeleton argument, which was provided to the Judge.
10. Mr Ahmed quite properly conceded that he had to acknowledge that there have been two important reported cases which have to be taken into account since he lodged his grounds of appeal.
11. One being case being the Court of Appeal's decision in **Celik v Secretary of State for the Home Department** [2023] EWCA Civ 921, and the other being the Upper Tribunal's decision in **Batool [2022] UKUT 00219**. Mr Ahmed said that in relation to the Court of Appeal's decision in **Celik** that there the Court only dealt with the argument in a very broad manner. He referred to paragraphs 67 and 68 whereby the Court of Appeal had said that the Upper Tribunal was correct in finding that Mr Celik did not satisfy the requirement of durable partner. Mr Ahmed said that **Celik** does not deal with the minutiae or definition of durable partner and in particular it did not deal with paragraph aaa. He referred to the clause as being a 'less' clause and it was the basis upon which Mr Ahmed sought to distinguish the Court of Appeal's decision.
12. In addition, Mr Ahmed said that the presidential panel's decision in **Batool and others (other family members: EU exit) [2022] UKUT 219 (IAC)** could also be distinguished because that was an application pursuant to the EU Settlement Scheme but from outside the United Kingdom and therefore the Appendix used was different. In **Batool** it was an Appendix EU family permit, whereas in the instant appeal it was simply an EU Appendix application. Mr Ahmed said that the durable partner definitions under the two appendices are different. Mr Ahmed

said, his argument was that Appendix EU provides scope for individuals without a relevant document to regularise their stay here in the United Kingdom. He said that FTT Judge Rose had said the relationship was durable and that aspect of the decision was not the subject of a cross appeal. Mr Ahmed submitted that if I agreed with his definition of durable partner, then the appeal could be allowed under the Rules.

13. I then heard from Ms Everett on behalf of the Respondent. She submitted that there was no error of law in the FTT Judge's decision. That decision had predated the Court of Appeal's judgment being handed down in **Celik** and that **Celik** supports what the FtT Judge had done in this instance. Durable partnership was a right which one had to apply for and unlike other EEA rights cards were a demonstration of that. Paragraph 68 of **Celik** says that notwithstanding the apparent unfairness in not being able to get married, undocumented partners, who were not married, could not benefit. Ms Everett submitted that the arguments put forward today should not persuade me that there was an error of law. Ms Everett submitted **Celik** was on all fours with the instant appeal.
14. Mr Ahmed did not reply to Ms Everett's submissions.

### **Decision and Analysis**

15. Since permission to appeal was granted in this matter, over thirteen months ago, the Court of Appeal has handed down its judgment in **Celik**. Lewis LJ, who provided the only reasoned judgment and with whom Singh LJ and Moylan LJ agreed said at paragraph 68:

*"The Upper Tribunal was correct in deciding that the decision of 23 June 2021 was in accordance with the requirements of the rules in Appendix EU and rule EU11 and EU14 in particular. The fact is that the appellant was not a family member at the material time. He had not married an EU national before 11 p.m. on 31 December 2020. He was not a durable partner within the meaning of Annex 1 to Appendix EU as he did not have a residence card as required and he did not have a lawful basis of stay in the United Kingdom (he was in the United Kingdom unlawfully). The appellant did not qualify for leave to remain under Appendix EU. There is no obligation to interpret or "read down" the relevant rules to reach a different result."*

16. The main focus of this appeal requires consideration of Paragraph 14EU of Appendix EU which states in part,

*"...(aaa) was not resident in the UK and Islands as the durable partner of a relevant EEA citizen (where that relevant EEA citizen is their relevant sponsor) on a basis which met the definition of 'family member of a relevant EEA citizen' in this table, or, as the case may be, as the durable partner of the qualifying British citizen, at (in either case) any time before the specified date, unless the reason why, in*

*the former case, they were not so resident is that they did not hold a relevant document as the durable partner of a relevant EEA citizen for that period (where their relevant sponsor is that relevant EEA citizen) and they did not otherwise have a lawful basis of stay in the UK and Islands for that period”*

17. In my judgment it can be seen that the Court of Appeal in **Celik** dealt with this and other EUSS related matters very extensively. In my judgment **Celik** disposes of the arguments raised by the Appellant in this matter. The Appellant had not married his Greek partner before 11pm on 31 December 2020. Nor was he a durable partner within the meaning of Annex 1 to Appendix EU. Indeed, there were numerous various other arguments and potential arguments which the Court of Appeal considered relating to the EU Settlement Scheme. They were comprehensively dealt with by the Court of Appeal. The judgment of the Court of Appeal is binding on me and I am not able to discern any proper basis upon which it can be distinguished. In my judgment paragraph 68 in **Celik**, in particular, deals with the submissions and grounds raised by Mr Ahmed today.
18. This was also made clear by Lewis LJ’s judgment in **Celik** at paragraph 33 to 35,

*33. "Durable partner" is defined in the Annex, so far as material to this appeal, as:*

*"(a) the person is, or (as the case may be) for the relevant period was, in a durable relationship with a relevant EEA citizen ... with the couple having lived together in a relationship akin to marriage or civil partnership for at least two years (unless there is other significant evidence of the durable relationship); and  
(b) (i) the person holds a relevant document as the durable partner of the EEA citizen ..."*

*34. A "relevant document" is defined as a family permit, registration certificate (neither of which is relevant to this appeal) or residence card issued under regulation 18 of the Regulations.*

*35. In short therefore, a person would be able to claim limited leave to remain as the family member of an EU national if (a) the person married an EU national before the end of the transition period or (b) was in a durable relationship and that relationship was evidenced by the grant of a relevant document, including a residence card issued under regulation 18 of the Regulations. We have been provided with a copy of the application form used for applications for leave to remain under the EUSS and were told that that form only required the provision of the limited information required to establish whether the person was entitled to leave to remain under the provisions of the*

*EUSS, that is, whether the applicant was in possession of one of the relevant documents.”*

19. Even without taking into account the Upper Tribunal’s decision in **Batool**, in my judgment the Court of Appeal’s decision in **Celik** means that this appeal must be dismissed.
20. Therefore the case law makes clear that the Appellant did not acquire rights of residence as a family member before the end of the transition period as he had not married his Greek sponsor until after the UK had exited from the European Union. Despite the Judge finding that Appellant being in a ‘durable relationship’ before the end of the transition period his entry had not been facilitated by the issuing of a residence card, nor had he made an application for facilitation of entry or residence before the end of the transition period on 31 December 2020. Therefore the Appellant’s situation did not engage the terms of the Withdrawal Agreement.
21. Therefore, in the circumstances, despite Mr Ahmed setting out his submissions clearly and succinctly, I am unable to agree with him.

### **Notice of Decision**

**There is no error of law in the decision of the First-tier Tribunal.**

**Thereby the decision of the First-tier Tribunal dismissing the Appellant’s appeal stands.**

**No anonymity order is made.**

**The Appeal has been dismissed and so I make no funding order.**

A. Mahmood  
**Abid Mahmood**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**November 2023**

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