IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003050
First-tier Tribunal No: EA/14952/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 April 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR SHKELZEN ELEZI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Terrell, Home Office Presenting Officer
For the Respondent: None

Heard at Field House on 22 March 2024

DECISION AND REASONS

1. The appellant, despite having been notified of the date time and venue of the hearing in the Upper Tribunal failed to attend. This was the second time that the appellant had failed to attend. In accordance with the overriding objective and the test of fairness, I considered that the appellant had been properly notified of the hearing in ample time and had not requested any adjournment and that it was fair to proceed.

2. The Secretary of State had previously appealed, with permission, against the decision of First-tier Tribunal Judge Morgan ("the judge") who allowed the appellant's appeal under the Immigration Citizens' Rights Appeals

(EU Exit) Regulations 2020) ("the Exit Regulations 2020") on the basis of Article 18 of the Withdrawal Agreement.

3. In an error of law decision dated 27th January 2023, a material error of law was found and the judge's decision was set aside and further directions set.

4. The appellant, a citizen of Albania born on 16th August 1995 had appealed against the decision of the Secretary of State dated 23rd October 2021 refusing him pre-settled status under the EU Settlement Scheme as the family member (durable partner) of an EEA citizen under Appendix EU. The refusal stated that the appellant did not have the relevant evidence. The appellant had made the application on 29th June 2021 under the EU Settlement Scheme ("EUSS").

5. The appellant married his EEA sponsor after the specified date of 31st December 2020 and was thus considered under the provisions for 'durable partner' route. The rule required either evidence that residence had been facilitated or that an application had been made prior to that date. Neither had occurred. The appellant therefore cannot fulfil the requirements under Appendix EU. The Withdrawal Agreement provides no applicable rights to a person in the appellant's circumstances. Article 10 (1) (e) confirms that the beneficiaries of the Withdrawal Agreement are limited to individuals residing in accordance with EU law as of 31st December 2020 ("the specified date"). The appellant was not 'in scope' of the Withdrawal Agreement' as he had not had his residence facilitated in accordance with national legislation. There was therefore no entitlement to the full range of judicial redress including Article 18(1)(r).

6. The Upper Tribunal issued guidance on the application of the EU withdrawal agreement in Celik (EU exit, marriage, human rights) [2022], approved by the Court of Appeal in Celik v SSHD [2023] EWCA Civ 921**,** as follows:

> *"(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.*
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> *(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) Regulation 9(4) of the 2020 Regulations confers a power on the First-tier Tribunal to consider a human rights ground of appeal,*

subject to the prohibition imposed by regulation 9(5) upon the Tribunal considering a new matter without the consent of the Secretary of State".

7. The appellant made his application under the EU Settlement Scheme not under the Immigration (European Economic Area) Regulations 2016. He married after the specified date of 31st December 2020 and although found to have a durable relationship, the appellant had failed to even apply for facilitation of his 'durable partnership' prior to the specified date. The appellant simply does not fall within the personal scope of the Withdrawal Agreement. His appeal therefore cannot succeed.

Notice of Decision

The appellant's appeal against the Secretary of State's decision is dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

24th March 2024