



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003755

First-Tier Tribunal No: EA/01500/2022
HU/56775/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25th April 2024**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**GRETA KARAMETA
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr T. Lindsay, Senior Home Office Presenting Officer
For the Respondent: In person

Heard at Field House on 10 April 2024

DECISION AND REASONS

1. For the sake of continuity, I will refer to the parties as they were before the First-Tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant (Ms Karameta) appealed the respondent's (SSHD) decision dated 27 October 2021 to refuse leave to remain under the EU Settlement Scheme immigration rules as the family member (durable partner) of a relevant EEA citizen.
3. The decision attracted a right of appeal under The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ('the CRA Regulations 2020'). The available grounds of appeal were that the decision was not in accordance with the residence scheme immigration rules or breached rights under the Withdrawal Agreement.
4. First-Tier Tribunal Judge S.L. Farmer ('the judge') allowed the appeal in a decision sent on 11 July 2022. The judge accepted that the appellant could not

meet the requirements of the residence scheme immigration rules but concluded that the decision was disproportionate with reference to Article 18(1)(r) of the Withdrawal Agreement. The judge accepted that the appellant was likely to be in a durable relationship before EU exit and married on a date after EU exit. The decision was 'unduly prescriptive' in the circumstances.

5. The Secretary of State applied for permission to appeal to the Upper Tribunal on the ground that the appellant did not meet the requirements of the residence scheme immigration rules and was not within the personal scope of the Withdrawal Agreement because she was not residing in the UK in accordance with EU law before the UK exited from the EU. The First-tier Tribunal granted permission to appeal in an order dated 08 August 2022.
6. In an order sent on 13 November 2023, Upper Tribunal Judge Rimington made further directions relating to the conduct of this appeal following the Court of Appeal's decision in *Celik v SSHD* [2023] EWCA Civ 921. She expressed the provisional view that, in light of that decision, the Secretary of State's grounds of appeal were bound to succeed and that the only possible outcome would be that the decision would be remade and the appeal dismissed. The parties were invited to consider their positions, and if appropriate, to agree a consent order. In the absence of a response to the directions the appeal would be listed for disposal. The Upper Tribunal has no record of a response to those directions. Mr Lindsay said that the respondent contacted the solicitors on record for the appellant to offer to agree a consent order, but there was no response.
7. Ms Karameta attended the hearing without a legal representative. She spoke good English and confirmed that she had understood my explanation about how the decision in *Celik* affected her case. She did not seek an adjournment. She said that she understood the position and agreed to the proposed course of action. Ms Karameta explained that she had already made an application for leave to remain under Appendix FM of the immigration rules and is awaiting a decision.

Decision and reasons

8. In light of the Court of Appeal's decision in *Celik* the respondent's grounds of appeal disclose an error of law in the First-Tier Tribunal decision. The First-Tier Tribunal found that the appellant was in a genuine relationship with her EEA partner prior to 31 December 2020, but there is no evidence to show that, as an extended family member, she had been facilitated entry by way of the issuing of a residence card before the UK exited from the EU. The appellant and her partner married after EU exit. For these reasons, the appellant did not meet the requirement of the residence scheme immigration rules to have a 'relevant document' and did not come within the personal scope of the Withdrawal Agreement. The decision is remade and the appeal must be dismissed.

Notice of Decision

The First-Tier Tribunal decision involved the making of an error on a point of law

The decision is remade and the appeal is DISMISSED under the CRA Regulations 2020

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 April 2024