IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004993
First-tier Tribunal No: EA/13537/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 April 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JETMIR BRIJA

Respondent

Representation:
For the Appellant: Mr Wain, Senior Presenting Officer
For the Respondent: In person

Heard at Field House on 26 March 2024

DECISION AND REASONS

1. The Secretary of State appeals with the permission of First-tier Tribunal Judge Chowdhury against the decision of First-tier Tribunal Judge Easterman. By his decision of 16 February 2022, Judge Easterman allowed Mr Brija's appeal against the respondent' refusal of his application for leave to remain under Appendix EU of the Immigration Rules.

2. To avoid confusion, I will refer to the parties as they were before the FtT: Mr Brija as the appellant and the Secretary of State as the respondent.

3. It is not necessary to set out much of the background. Mr Brija is an Albanian citizen who was born on 15 March 1996. He states that he entered the UK fifteen years ago. In February 2018, he met an Italian national named Ardisa Mera on Facebook. An online relationship developed. Her father discovered that they were communicating with each other, and he came to

the UK, with his wife and Ms Mera, to meet the appellant. He gave the appellant his blessing to marry Ms Mera and they became engaged in August 2020. She returned briefly to Albania to obtain a passport. She returned to the UK on 23 August 2020, and they have cohabited since then. They endeavoured to get married but encountered difficulty as a result of the pandemic. They were finally able to marry in Wood Green on 4 May 2021. It is apparent from the photographs of the wedding that the sponsor was pregnant at that time. Their daughter, Lorena Brija, was born on 11 July 2021. Mother and daughter have status under the settlement scheme.

4. On 8 June 2021, the appellant applied for leave to remain as Ms Mera's partner, under Appendix EU of the Immigration Rules. The application was refused on 13 September 2021. The respondent noted that the appellant had married his wife after the 'specified date' (31 December 2020 and that he was not eligible for leave as her spouse for that reason. The respondent also noted that the appellant had not had a documented right to reside as Ms Mera's durable partner at any point.

5. The appellant appealed to the FtT. Judge Easterman found that the relationship between the appellant and Ms Mera was a genuine and subsisting one which had begun at the time, and in the manner, which I have summarised above. He accepted that they were in a durable relationship prior to the specified date and that 'it would not be proportionate … to refuse the appellant'.

6. The Secretary of State appealed, contending that the judge had misdirected himself in law. Judge Chowdhury granted permission to appeal on 13 October 2022, noting that the respondent's submissions were supported by the decisions of the Upper Tribunal in Celik [2022] UKUT 00220 (IAC) and Batool [2022] UKUT 00219 (IAC).

7. The appeal to the Upper Tribunal was stayed to await the decision of the Court of Appeal in Celik v SSHD [2023] EWCA Civ 921 [2023] Imm AR 5. That decision was handed down on 31 July 2023.

8. In relation to those who married after the end of the transition period, Lewis LJ (with whom Moylan and Singh LJJ agreed) held that Article 10(1)(e)(i) of the Withdrawal Agreement clearly did not include persons who married an EU national after the end of the transition period and who were not, therefore, residing in the UK as a spouse or civil partner in accordance with EU law at the end of the transition period. The fact that unforeseen events meant that certain people were not able to exercise rights of residence (even if as a result of events outside their control) before the set date did not lead to manifestly absurd, arbitrary or unreasonable results. The principle of proportionality, whether as a matter of general principle, or under article 18(1)(r), was not intended to lead to the conferment of residence status on people who would not otherwise have any rights to reside.

9. In relation to those who submitted that they had been 'durable partners' before the end of the transition period, the Court of Appeal held that Article 10(2) and (3) of the Withdrawal Agreement dealt with situations where the residence of a person was 'facilitated' by the host state in accordance with

legislation. The reference to residence being 'facilitated' meant that a decision had been taken in relation to a particular individual under the relevant national legislation *granting* that individual a right to enter or reside in the relevant state.

10. Directions were issued by Upper Tribunal Judge Kebede on 10 December 2023, inviting the parties to consider their respective positions in light of Celik v SSHD. It was her provisional view that the Secretary of State's appeal was bound to succeed in light of that decision. She invited the parties to consider whether the matter could be settled by consent, failing which it would be listed for a hearing.

11. There was no response to those directions and the matter was accordingly set down for hearing. On 13 March 2024, Sentinel Solicitors, who had previously been representing the appellant, came off the record, stating that they were without instructions.

12. The appellant attended the hearing before me in person, with his wife and daughter. He stated that he was content to proceed without representation. He was content to speak in English, in which he was plainly fluent. He confirmed that he was aware of the decision in Celik v SSHD. He stated that he had received advice on that decision from Sentinel Solicitors and a friend of his, who is a solicitor in Finsbury Park. He nevertheless invited me to consider the following matters.

13. The appellant stated that he had been in the UK for fifteen years and had been to court several times. It seemed to him that he had always prevailed at first instance, but those decisions had been overturned on appeal. He had many friends in the UK and had scant connection to Albania, as he had been a teenager when he first arrived. It had been mentally 'very tough' as he had been without status and had been unable even to register with a GP. He had supported his family by working in construction, however, and his wife worked as a cleaner.

14. I did not invite Mr Wain to make submissions.

15. As I stated at the hearing, the position in law is clear. The appellant married after the end of the transition period. The fact that he was prevented from marrying earlier as a result of the pandemic is legally irrelevant. He made no application for facilitation of residence as a durable partner before the end of the transitional period, nor was he granted a residence card in that capacity. He did not therefore fall within the personal scope of the Withdrawal Agreement and the principle of proportionality was of no application.

16. The appellant could not succeed on either of the grounds which were available to him under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. The judge erred in concluding otherwise. In the circumstances, the only course open to me is to allow the respondent's appeal to the Upper Tribunal and to remake the decision on the appeal by dismissing it.

17. That is not to say that the appellant may not have alternative ways in which he might apply for leave to remain. His wife and daughter have leave to remain under the Settlement Scheme and might properly act as his sponsor(s) in an application under different provisions of the Immigration Rules. As I said to him at the hearing, the findings made by Judge Easterman about his relationship are in no way disturbed by my decision and it was clear to me, as it was to the judge in the FtT, that the appellant and his wife and daughter comprise a close and supportive family unit. Those findings may provide a basis for an alternative application, but they cannot assist him in this appeal, given the limited grounds which are available under the 2020 Regulations.

Notice of Decision

The decision of the FtT involved the making of an error of law. That decision is set aside. I remake the decision on the appeal by dismissing it.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 March 2024