



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/04696/2014

THE IMMIGRATION ACTS

Heard at Field House

On 5th December 2014

**Determination
Promulgated**

On 17th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYED FAKHAR JAVED

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Mr D Sellwood, Counsel, instructed by Rashid & Rashid,
Tooting, London

DETERMINATION AND REASONS

1. Mr Javed is a citizen of Pakistan whose date of birth is recorded as 29th August 1980. He made application for a Certificate of Entitlement under the Immigration (European Economic Area) Regulations 2006. On 3rd January 2014 the Secretary of State decided to refuse that application and Mr Javed appealed. His appeal was heard on 14th August 2014 by Judge of the First-tier Tribunal Majid sitting at Taylor House. There were a number of issues in the case but it suffices for the purposes of the appeal before me to observe that there was an issue concerning paternity of a child of

the relationship and also whether or not the Sponsor, a national of Slovakia, was exercising treaty rights as required, given the nature of the application being made.

2. Judge Majid allowed the appeal. It is a determination of some length with reference to considerable learning. It is not always easy, however, when reading the determination, to relate that learning to the issues that fell to be considered.
3. By notice dated 8th September 2014, the Secretary of State made application for permission to appeal to the Upper Tribunal and on 6th November 2014 Judge Hollingworth granted permission. Thus the matter comes before me.

Was there an error of law?

4. Mr Sellwood, quite properly in my view, did not really resist the appeal. It was the Secretary of State's contention that the determination of Judge Majid was inadequately reasoned both in respect to paternity and with respect to the issue whether or not the Sponsor was exercising treaty rights. I entirely agree with the submissions of the Secretary of State that the reasoning is inadequate. The error of law in this determination is clearly material.
5. The question then arises as to whether I should remake the determination or remit it for rehearing. This is a determination beyond repair. Mr Sellwood invited me to have regard to additional evidence (DNA evidence) relating to the child. I would have admitted that evidence because Mr Avery did not object to it were it possible for me to remake the decision. However the determination is, I find, such that the only course that reasonably can be taken, having regard to the Senior President's Guidelines, is to remit this appeal for a rehearing before a judge other than Judge Majid.

The Decision

6. The appeal of the Secretary of State is allowed. The determination of the First-tier Tribunal is set aside to be reheard before a judge other than Judge Majid in the First-tier Tribunal.

Signed

Date **17th December 2014**

Deputy Upper Tribunal Judge Zucker