



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

Appeal Number: OA/05613/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25th June 2015**

**Decision and Reasons Promulgated
On 29th June 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**KELMAND SOKOLI
(No anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

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

For the Respondent: Mr. M. Azmi, counsel, instructed by Direct Immigration Solutions

DECISION AND REASONS

History of Appeal

1. The Respondent, who was born on 28th March 1988, is a national of Albania. He entered the United Kingdom illegally on 1st October 2008 and worked here and was removed at public expense on 7th March 2010. He then re-entered illegally on 23rd December 2010 and was once again removed on 23rd December 2011. He lived with Gennifer Yvonne Solomon, who is a British citizen, between September and December 2011 and was arrested on 8th December 2011, when they attempted to marry.

2. On 13th April 2012 the Appellant applied for entry clearance in order to return to the United Kingdom to marry Gennifer Solomon but this application was refused on 30th July 2012. This decision was reviewed by an Entry Clearance Manager on 31st October 2012. However, this decision was subsequently withdrawn on 18th February 2013.
3. He made a further application for entry clearance on 14th February 2014 in order to return to the United Kingdom to marry Gennifer Solomon but this application was refused on 4th April 2014 under paragraph 320(11) of the Immigration Rules. The Entry Clearance Office also asserted that he was not satisfied that his relationship with Gennifer Solomon was genuine or that he was genuinely seeking entry in order to marry her and live with her on a permanent basis.
4. The Appellant appealed and his appeal was heard by First-tier Tribunal Judge A. W. Khan on 16th December 2014. In a decision and reasons promulgated on 7th January 2015, he allowed the appeal on the basis that the Respondent's decision was not in accordance with the law. He did so because he found that the decision to refuse the Appellant's entry clearance under paragraph 320(11) had not been referred by the Entry Clearance Officer to the Entry Clearance Manager, as required by Section RFL 7.5. In addition, he found that the entry clearance officer had failed to make a decision in relation to the Appellant's initial application.
5. The Respondent sought permission to appeal on 14th January 2015 and permission to appeal was granted by Upper Tribunal Judge Martin, sitting as a judge of the First-tier Tribunal on 16th February 2015. She found that it was arguable that the Judge erred in finding the decision unlawful without evidence that the decision to refuse the spouse settlement application under paragraph 320(11) had not been referred to an Entry Clearance Manager.
6. The initial error of law hearing set down to be heard on 29th May 2015 had to be adjourned due to a bereavement in counsel's family.
7. At the error of law hearing, Mr. Avery asserted that the First-tier Tribunal Judge had erred in law as there was no evidence to confirm that the decision had not been reviewed by an entry clearance manager. Counsel for the Appellant also sought to rely on the unreported case of the Upper Tribunal where a decision was found to be not in accordance with the law because there was no entry clearance manager authorisation.

Error of Law Hearing

8. There was no dispute between the parties that paragraph RFL7.5 of internal guidance provided to entry clearance staff states that entry clearance officers will need to obtain entry clearance manager authorisation for all refusals under paragraph 320(11). There was also no dispute that in *Sultana and Others (rules: waiver/further enquiry; discretion) [2014] UKUT 00540 (IAC)* the Upper Tribunal held that "a failure to recognise, or give effect to, an IDI may render an immigration decision not in accordance with the law" and that the same should apply in relation to guidance provided to entry clearance staff.

9. The Respondent had appealed on the basis that there was no evidence to show that the decision had not been referred to an entry clearance manager. However, there was no evidence before the Judge from an entry clearance manager and the inclusion of such documents in entry clearance cases is standard practice. There was also no mention in the record of proceedings or the decision and reasons of the Home Office Presenting Officer asserting that any such letter was in existence. As a consequence, I do not find that the First-tier Judge did err in law on this basis.
10. Furthermore, Mr. Avery informed me at the hearing that he had not been able to obtain a similar document in relation to the decision under appeal and could not disclose any other information as to whether the decision had been reviewed by an entry clearance manager. I have also taken into account the fact that my record of proceedings for 29th May 2015 notes that Mr. Melvin, the Home Office Presenting Officer on that occasion, told me that there was no entry clearance manager's letter in relation to this application as the entry clearance manager had relied on the letter produced by an entry clearance manager, dated 31st October 2012.
11. It is also clear from the documents on the court file, that the Respondent has yet to make a fresh decision on the Appellant's initial application and that when doing so the Appellant will be entitled to rely on paragraph 320(7C) which was still in force at the date of that application.
12. I do not find that the failure to reach a decision on that application rendered the Respondent's later decision unlawful but would hope that when the Respondent reviews the decision on this later application, a decision is also made on the earlier application.
13. For all of these reasons I am satisfied that there were no material errors of law in the First-tier Tribunal Judge's decision and findings and that it should stand.

Conclusions:

1. The First-tier Tribunal Judge's decision and findings did not include material errors of law.
2. The decision that the Respondent's decision was not in accordance with the law stands and the Appellant's applications remain undecided by the Respondent.

Date 26th June 2015



Upper Tribunal Judge Finch