



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

Appeal Number: OA/11066/2014

THE IMMIGRATION ACTS

Heard at Manchester

**Decision and Reasons
Promulgated**

On 3 December 2015

On 16 December 2015

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MUHAMMAD AKMAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Hussain, Equity Law Solicitors

For the SSHD: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Pakistan and is married to a British citizen ('the sponsor'). His appeal against a decision made by an entry clearance officer on behalf of the SSHD to refuse him entry clearance as a spouse dated 20 August 2014 was dismissed by First-tier Tribunal Judge Davies in a decision promulgated on 11 February 2015.
2. The issues of concern to the SSHD and Judge Davies focused upon the appellant's ability to meet the financial requirements of the Immigration Rules and the sponsor's employment.

Background

3. The hearing before Judge Davies took place over two days. The first hearing took place on 21 January 2015. The judge raised concerns regarding some of the evidence relied upon by the appellant regarding the sponsor's employment and the appeal was adjourned part-heard to enable the appellant to comply with directions to file and serve further evidence. The judge directed the appellant's representatives to submit a witness statement from the sponsor's employer setting out the nature of the company (Avant Guard), how many people it employs and the exact nature of the sponsor's employment as a business development manager, together with the most recent audited accounts for the company, within 14 days.
4. A paginated and indexed supplementary bundle was received by the Tribunal on 2 February 2015. This contained detailed evidence regarding the sponsor's claimed employer including a detailed letter from the managing director of the Avant Guard, Mr Parkinson, a job description for the sponsor, the company's annual accounts and other documentation confirming the existence of the company.
5. The hearing was relisted for 6 February 2015. The judge's typed record of proceedings makes it clear that at 12.10 he commenced the hearing in the full knowledge that the appellant's legal representative was in another court room completing an asylum appeal before another judge. Judge Davies regarded this as unacceptable and conducted the entire hearing in the absence of the appellant's representative. Although this was the subject of part of the grounds of appeal against Judge Davies' decision, permission to appeal on this basis was refused by Judge Pirotta in a decision dated 24 April 2015. Although this seems a surprising decision, the application to appeal on this basis was not renewed and Mr Hussain accepted that the issue could be argued before me.
6. I therefore turn to the ground of appeal that has been the subject of the grant of permission - Judge Davies failed to take into account documentary evidence directly relevant to the issues arising in the appeal. After hearing from Mr Hussain, Mr Harrison quite properly conceded that there had been a material error of law in this respect. I therefore did not need to hear from Mr Hussain further save to clarify whether or not to remit the appeal to the First-tier Tribunal to make findings of fact afresh. I address this issue below.

Error of law

7. Judge Davies did not accept that the sponsor was genuinely employed as claimed and concluded that false representations had been made regarding her claimed employment [32 and 33]. In so finding the judge regarded it as significant that his directions had not been complied with [34]. Whilst it is correct that Mr Parkinson did not provide a witness statement, he provided detailed evidence addressing each of the issues set out in the directions. This information is contained in a supplementary 21 page bundle which I found very easily within the

Tribunal file. It is also absolutely clear that the Tribunal received this bundle (on 2 Feb) well in advance of the second hearing before Judge Davies (on 6 Feb). At that hearing the sponsor referred to the evidence from Mr Parkinson / Avant Guard but Judge Davies said this regarding the letter [19]: “*Such a letter was not in the possession of myself or the Home Office Presenting Officer*”.

8. This is a mistake of fact that has caused unfairness to the appellant. Whatever happened and whatever the reasons for it (which may not be unconnected to the judge’s decision to proceed without the appellant’s legal representative) Judge Davies failed to take relevant, apparently cogent and material evidence into account. As Mr Harrison conceded this alone is sufficient to amount to a material error of law that requires the decision to be set aside and remade afresh.

Remittal

9. Mr Hussain invited me to remake the decision myself. I indicated sympathy with that option bearing in mind the unfortunate delay in this matter. On the other hand, this is a case in which the appellant has been deprived of a fair hearing before the First-tier Tribunal and in which there has been procedural irregularities. In addition fact-finding shall need to commence afresh with cross-examination. The decision needs to be remade completely and given the nature and extent of those findings, this should be done in the First-tier Tribunal. I have had regard to para 7.2 of the relevant *Senior President’s Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

10. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
11. The appeal shall be remade by First-tier Tribunal *de novo*.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in Manchester (TE: 2 hrs) on the first date available.
- (2) Within 28 days the appellant’s representatives shall file and serve a comprehensive indexed and paginated bundle (to replace all previous bundles) containing all relevant documents in chronological order.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
3 December 2015

