



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05591/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 May 2018

Decision and Reasons Promulgated  
On 21 May 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

MOHAMMAD RASHEDUL ISLAM  
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant:

Mr A. Pipe, Counsel instructed by Visa Inn

For the respondent:

Ms A. Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed against the respondent's decision dated 14 February 2016 to refuse a human rights claim.
2. First-tier Tribunal Judge M.A. Khan ("the judge") dismissed the appeal in a decision promulgated on 04 July 2017. The judge noted the parties' agreement that the only issue to be determined was whether the appellant submitted a false document with an

earlier Tier 2 application thereby justifying the refusal of the application under the 'Suitability' requirements contained in Appendix FM.

3. The First-tier Tribunal purported to determine the appeal with reference to two decisions (14/02/16 & 04/01/17). Further to the hearing in the Upper Tribunal, the appellant's representatives have been able to clarify the chronology of events. In summary, a second decision dated 04 January 2017, in which the respondent refused a human rights claim made on grounds of long residence, was appealed (HU/01212/2017). The appellant's solicitor withdrew the second appeal on 11 September 2017 on the understanding that the two cases would be linked. However, the usual practice would be for the First-tier Tribunal to link the two appeal cases, not merge two appeals into one.
4. The wording of section 82 of the Nationality, Immigration and Asylum Act 2002 ("the NIAA 2002") makes clear that an appeal arises against a decision to refuse a human rights claim. For the avoidance of doubt, this appeal is confined to an appeal against the decision dated 14 February 2016. I accept Mr Pipe's submission that it makes little difference in practical terms because relevant human rights issues can be considered in this appeal, including whether the appellant meets the requirements of the private life rules relating to long residence. It is not a 'new matter' because the respondent has already considered the issue.
5. Rule 40(3) states that the Upper Tribunal must provide written reasons with a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings. Rule 40(3) provides exceptions to the rule if the decision is made with the consent of the parties or the parties have consented to the Upper Tribunal not giving written reasons. In this case both parties consented to the decision at the hearing so it is not necessary to give detailed reasons.
6. In summary, it is agreed that the judge unfairly refused an adjournment to allow time for the appellant to respond to evidence produced by the Home Office Presenting Officer on the morning of the hearing. The appellant was denied a fair opportunity to adduce evidence, which he has now obtained from Mr McGirr (the Home Office official to whom the appellant reported the fraud). The judge made an error of fact in wrongly assuming that the 'client care letter' dated 13 January 2016 was mistakenly sent to the Home Office, when in fact, the appellant gave it to Mr McGirr at the meeting he had with him on 14 January 2018. The chronology of events is relevant to a proper assessment of the credibility of the appellant's claim to be an innocent victim of the fraud rather than a knowing participant.
7. The First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside. The effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal (paragraph 7.2 Practice Statement). The parties agreed that the appropriate course was to remit the appeal to the First-tier Tribunal for a fresh hearing.

**DECISION**

The First-tier Tribunal decision involved the making of an error of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 16 May 2018  
Upper Tribunal Judge Canavan