



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

**Appeal Number: EA/07601/2018 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 30 July 2020**

**Decision & Reasons Promulgated  
On 6 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**WASIM UL GHANI.**

**Appellant**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Pakistan. On 28 September 2018 he applied for a permanent residence card as a former family member of an EEA National. His application was refused on 21 November 2018. He appealed against this decision and his appeal was dismissed by First-tier Tribunal Judge Brewer in a decision promulgated on 10 October 2019.
2. Permission to appeal to the Upper Tribunal was refused by First-tier Tribunal Judge O'Brien on 31 January 2020 but granted by Upper Tribunal Judge Frances on 18 March 2018.
3. On 12 May 2020 Upper Tribunal Judge Canavan made further directions, having come to the view that in the light of the Corona Virus Pandemic, it would be appropriate to determine

whether there had been an error of law on the papers. On 20 May 2020 the Appellant's solicitors wrote to the Respondent asking whether it would be possible to reach an agreement between the parties in relation to the issues to be decided at the error of law hearing. They did not receive a reply from the Respondent and, therefore, they made two further submissions which they sent to the Upper Tribunal and to the Respondent on 1 June 2020. I extend time for them to do so in the light of the restrictions imposed, as a result of the current pandemic.

4. On 8 June 2020 the Respondent wrote to the Upper Tribunal and the Appellant's solicitors stating that she did not oppose the Appellant's application for permission to appeal and inviting the Upper Tribunal to remit the appeal to the First-tier Tribunal for a re-hearing. I have extended time for the Respondent to reply to Upper Tribunal Judge Canavan's directions in recognition of the difficulties faced by Home Office Presenting Officers at the start of the current pandemic.
5. Meanwhile, it appears that the Appellant's further submissions had not reached the Upper Tribunal file and on 30 June 2020 the Listing Team wrote to the Appellant's solicitors again. They replied on 6 July 2020, attaching the further submissions previously sent to the Upper Tribunal and giving details of the email sent on 1 June 2020.
6. The Appellant opposed the error of law hearing being heard on the papers on the basis that an oral hearing was necessary to fully interrogate the facts and law on which he relied. However, in her directions Upper Tribunal Judge Canavan explicitly invited the parties to seek to reach an agreement and the Respondent has now stated that she does not oppose the grounds on which permission to appeal was sought. Therefore, there are no issues which could be explored at an oral error of law hearing.
7. I have read and taken into account the detailed submissions made in the Appellant's submissions, dated 31 May 2020 and agree that these will need to be explored at an oral hearing but in the light of the concessions made by the Respondent in relation to the grounds of appeal, I find that the appropriate venue for such a hearing is the First-tier Tribunal. Therefore, I have proceeded to deal with the error of law issue on the papers, so that there can be a swift remittal to the First-tier Tribunal.

## **ERROR OF LAW DECISION**

8. I have taken into account the detailed grounds of appeal drafted by Mr Mustafa and dated 22 October 2019 and also his further submissions, dated 31 May 2020. For the reasons given in these documents, which are not opposed by the Respondent, I agree with Upper Tribunal Judge Frances that First-tier Tribunal Judge Brewer erred in his assessment of whether the Appellant was a qualified person for the required five year period.
9. Therefore, I find that First-tier Tribunal Judge Brewer's decision contained material errors of law.

### **DECISION**

- (1) The Appellant's appeal is allowed
- (2) First-tier Tribunal Judge Brewer's decision is set aside.
- (3) The appeal is remitted to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judges Brewer and O'Brien.

Nadine Finch

Signed  
Upper Tribunal Judge Finch

Date 30 July 2020