



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

Appeal Number: OA/24436/2012

**Heard at Field House
on 10th January 2014**

**Determination
Promulgated
on 14th January 2014**

THE IMMIGRATION ACTS

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

Between

ENTRY CLEARANCE OFFICER (ISTANBUL)

Appellant

and

**NUSRET BORA
(Anonymity direction not made)**

Respondent

Representation:

For the Appellant: Mr Nath – Senior Home Office Presenting Officer.
For the Respondent: Mrs Bora assisted by a McKenzie friend.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Foulkes-Jones promulgated on the papers on 11th September 2013 in which the Judge allowed the appeal against the refusal of an Entry Clearance Officer (ECO) to grant leave to enter the UK as a partner of his sponsor.

2. The appeal was allowed on Article 8 ECHR grounds. The ECO sought permission to appeal, which was granted, on the basis of a conviction for murder of which it is said the ECO and the First-tier Tribunal were unaware, but which was known to the sponsor but not declared in the application form.
3. This is a relevant issue when assessing the application under the Rules and Article 8 ECHR. Following discussion the following order was agreed between the parties that the determination of Judge Foulkes-Jones shall be set aside BY CONSENT on the basis of an error of law that arose through no fault of the Judge. The facts on which the determination was reached are incomplete as there was a failure by both parties to disclose material evidence leading to unfairness in the decision making process.
4. The appeal shall be remitted to Taylor House to be heard by Judge F C Lindsley sitting as a judge of that Tribunal on Friday 21st March 2014 @ 10.00am. Time estimate 3 hours.

Decision

5. **The First-tier Tribunal Judge materially erred in law. We set aside the decision of the original Judge. We remit the appeal to the First-tier Tribunal for further hearing.**

Anonymity.

6. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) as a result of the extensive press coverage of this matter in which the identity of Mr Bora and the salient facts of the case have already been published. No application for anonymity was made.

Signed.....
Judge of the Upper Tribunal

Dated the 10th January 2014

