



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

Appeal Number: IA/39285/2013

THE IMMIGRATION ACTS

Heard at Field House

On 7th April 2015

**Determination
Promulgated**

On 17th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR APURBA KUMAR ROY
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rahman, Legal Representative

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 16th June 1983. The Appellant made on 27th July 2013 a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system and for a biometric residence permit. That application was refused on 10th September 2013. The Appellant appealed and the appeal came before Designated Judge of the First-tier Tribunal Digney sitting at Hatton Cross on 4th September and 30th October 2014. In

a determination promulgated on 1st December 2014 the appeal was dismissed.

2. The Grounds of Appeal indicated that at paragraphs 24 to 27 of the determination four witnesses were named to give evidence, none of whom appeared before the Tribunal or had any relevance to the case. In addition, a wrongly named Respondent was referred to and the Appellant's date of birth was recited as being different from that that it was. On 29th January 2015 First-tier Tribunal Judge Andrew granted permission to appeal being satisfied that there was an arguable error of law that the judge took into account evidence which did not relate to this particular case. On 6th February 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24 and invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider the Appellant's case properly and that the Secretary of State did not oppose the Appellant's application for permission to appeal.
3. It is on that basis that the appeal came before me. The Appellant was represented by his legal representative Mr Rahman. The Secretary of State appeared by his Home Office Presenting Officer Mr Jarvis.
4. In submissions made to me, it is clear that for some reason unknown the First-tier Tribunal Judge has confused another case with this particular case in drafting his decision. There was an acceptance by the Secretary of State therefore that the case had been wrongly considered and the decision was clearly therefore unsafe. Unfortunately Mr Jarvis advised that he had not been provided with the full Home Office file and consequently despite noting the Rule 24 response he was not in a position to hear the matter by way of a continuance but he also indicated that there had not been a clear and proper First-tier Tribunal decision and in such circumstances I was invited by both legal representatives to remit the matter back to the First-tier Tribunal for rehearing.
5. Such remittal requires the permission of the Upper Tribunal. In such circumstances pursuant to the Upper Tribunal Rules I granted that permission. Unfortunately due to the Kingsway fire, the Tribunal centre had neither telephones nor computers available and it was agreed that the best way of dealing with this matter was merely to make a direction remitting the case back and to invite the administration to fix the date with Hatton Cross at a later date.

Notice of Decision

6. The decision of the First-tier Tribunal contained a material error of law. The decision is set aside and is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard on the first available date 28 days hence with an ELH of two hours before any First-tier Tribunal Judge other than Designated Judge Digney. Leave is granted to the Appellant's solicitors to

file and serve an up-to-date bundle of evidence upon which they seek to rely at least seven days prior to the restored hearing. No interpreter is required.

7. The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **7th April 2015**

Deputy Upper Tribunal Judge D N Harris