



**Upper Tribunal
(Immigration and Asylum Chamber)
VA/19471/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 16 December 2014

Promulgated

On 9 January 2015

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Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR BESART VITIJA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Chambers on 11 November 2014 against the determination of First-tier Tribunal Judge Bircher who had allowed the Respondent's appeal under the Immigration Rules against the refusal of his application for entry clearance as a visitor

in a determination promulgated on 29 September 2014. The appeal was determined on the papers as the Respondent had requested.

2. The Respondent is a national of Kosovo, born on 8 July 1994. He is a student, but the Entry Clearance Officer had not been satisfied with the evidence provided and concluded that the Respondent's intention to leave the United Kingdom at the end of his visit was in doubt. The right of appeal to the First-tier Tribunal was limited to human rights and Equality Act 2010 issues.
3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted because the judge had misapplied the law in that there was no longer any right of appeal to the First-tier Tribunal under paragraph 41 of the Immigration Rules. The judge had not considered whether or not the Respondent's human rights were engaged.
4. Directions were issued by the Upper Tribunal in standard form. The Respondent was not represented at the hearing and had sent in no further material for the tribunal to consider. The tribunal considered that the onwards appeal could nevertheless be justly determined.

Submissions - error of law

5. Mr Tufan for the Appellant relied on the grounds and the grant of permission to appeal. The Respondent's human rights were simply not engaged on the facts and the determination was misconceived. In any event it was proportionate for the Respondent to make a fresh entry clearance application.

The error of law finding

6. The tribunal agreed with Mr Tufan's submissions, which need not be repeated. The tribunal finds that the determination contains material errors of law, as identified in the grant of permission to appeal, such that it must be set aside and remade. The full right of appeal for family visitors ended on 25 June 2013. There was no evidence before the tribunal to show that the entry clearance

application had been submitted prior to that date. The appeal to the Upper Tribunal is allowed.

The fresh decision

7. In this part of the determination it is convenient to refer to the parties by their original designations. As noted above, the Appellant did not raise or pursue issues of race discrimination or human rights in his Notice of Appeal to the First-tier Tribunal. It is not easy to guess what they could possibly have been. No such point was "Robinson obvious": see R v the Secretary of State for the Home Department, ex p Robinson [1997] 3 WLR 1162. The Appellant who is an adult lives in Kosovo and has no private or family life in the United Kingdom. It was open to the Appellant to make a fresh entry clearance application addressing the issues raised by the Entry Clearance Officer when refusing his application. The First-Tier Tribunal's decision can only be remade in one way, that is, that the appeal against the Entry Clearance Officer's decision must be dismissed.

DECISION

The making of the previous decision involved the making of an error on a point of law. The appeal to the Upper Tribunal is allowed. The decision of First-tier Tribunal Judge Bircher is set aside and remade as follows:

The appeal of the original Appellant is DISMISSED

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT
FEE AWARD

The appeal was dismissed and so there can be no fee award

Signed

Dated

Deputy Upper Tribunal Judge Manuell