



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

Appeal Numbers: UI-2021-001462
EA/06602/2021

THE IMMIGRATION ACTS

**Decision under rule 34
On 30 June 2022**

**Decision & Reasons Promulgated
On 23 August 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**AAMIR IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

1. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules'). Consequent to the respondent confirming that she no longer contests the appeal, observing the importance of these proceedings to the appellant and being mindful of the overriding objective that requires the Tribunal to deal with cases fairly and justly, I am satisfied that it is just and fair to proceed to consider this matter under rule 34.
2. The appellant appeals against a decision of the respondent to refuse to issue him with an EEA Family Permit. The decision is dated 22 March 2021.
3. The appellant's appeal was initially refused by the First-tier Tribunal by a decision dated 29 November 2021. The appellant was granted permission to appeal to this Tribunal and the decision of the First-tier Tribunal was set

aside in respect of the findings of fact as to the relationship between the appellant and his sponsor.

4. The finding of fact at [15] of the First-tier Tribunal decision as to the appellant's dependency upon his sponsor at the date of his application for an EEA Family Permit was preserved.
5. The sole issue to be considered at the resumed hearing concerned the stated relationship between the appellant and his sponsor, a Belgian national, purported to be his brother.
6. In respect of DNA evidence filed by means of an application made under rule 15(2A) of the 2008 Rules, the Upper Tribunal directed:
 - i) The respondent is to notify the appellant and the Tribunal as to whether the DNA test results dated 17 December 2021 are contested, and if not whether the respondent continues to defend this appeal. Such notification is to be sent to the appellant and the Tribunal in writing no later than 4pm on Monday 6 June 2022.
 - ii) Silence from the respondent in respect of direction (i) will be taken as an acceptance that the DNA test results dated 17 December 2021 satisfactorily establish the sibling relationship as claimed.
 - iii) Liberty to apply.
7. By email communication sent to the Upper Tribunal and the appellant's solicitors on 28 June 2022, Mr. Kotas, Senior Presenting Officer, apologised for the delay in the respondent's compliance with directions. He confirmed on behalf of the respondent, *inter alia*:

'... the SSHD has not sought to challenge the DNA results within the timeframe as specified by the Upper Tribunal's directions. In the circumstances, the respondent does not oppose the admission of the DNA report nor dispute the nature of the relationship as claimed between the appellant and sponsor.

In light of the above, the SSHD no longer contests the appellant's appeal given the preserved findings of fact as to dependency by the FTT.

Accordingly, the Upper Tribunal is invited to issue a determination on the papers and without a hearing pursuant to Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 reflecting the respondent's concession in this case.'
8. I observe the respondent's concession. Observing that the only issue before this Tribunal is the familial relationship between the appellant and the sponsor, and that such familial relationship has been established by DNA evidence, the respondent's concession is appropriate.
9. I find that the appellant and the sponsors are brothers. Noting the preserved findings of fact as to dependency, I allow the appellant's appeal.

Notice of Decision

10. The decision of the First-tier Tribunal, dated 29 November 2021, involved the making of a material error of law and was set aside by the Upper Tribunal by a decision sent to the parties on 17 May 2022 pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
11. The finding of fact made by the First-tier Tribunal at [15] of its decision was preserved.
12. The decision is remade, and the appeal is allowed.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 30 June 2022

TO THE RESPONDENT FEE AWARD

I have allowed the appellant's appeal consequent to the filing of post-decision DNA evidence that was not available to the decision-maker.

I do not make a fee award.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 30 June 2022