



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2022-006307

First-tier Tribunal No:  
EA/14810/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**IVAN UZZAMAN**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer  
For the Respondent: None

**Heard at Field House on 11 April 2023**

**DECISION AND REASONS**

*Introduction*

1. The claimant is a citizen of Bangladesh born on 25<sup>th</sup> July 2007. He applied for permanent residence under the EU Settlement Scheme which was refused by the Secretary of State on 5<sup>th</sup> October 2021. The claimant contended that he is the dependent brother of Kabir Uzzaman, a citizen of Italy, and as a result entitled to permanent residence in the UK under this scheme. His appeal against the decision was allowed by First-tier Tribunal Judge Bart-Steward in a determination promulgated on the 26<sup>th</sup> April 2022.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Kelly on 19<sup>th</sup> January 2023 on the basis that it was arguable that the First-tier judge had erred in law firstly in finding that the claimant fell within the scope of the Withdrawal Act; and secondly in failing to reason why s.55 of the Borders, Citizenship and Immigration Act 2009 was relevant to a grant of residence under the EU Settlement Scheme.
3. In light of the grant of permission to appeal the claimant wrote to the Upper Tribunal saying that he was in the process of making a new application and in light of this the Secretary of State did not intend to proceed with this appeal. The Secretary of State wrote to explain that she was happy for the appeal to be withdrawn by consent if the claimant accepted that the contended errors were made out in the decision and that it could not be relied upon in the future. Upper Tribunal Lawyer Asim Hussain made a decision on the 22<sup>nd</sup> February 2023 that it was open to the parties to agree a consent order withdrawing the appeal which would then be considered by the Upper Tribunal Judge allocated to determine the appeal. No consent order was received by the Upper Tribunal in advance of the hearing but in the hearing Mr Lindsay emailed the Upper Tribunal the consent order signed by Zyber Law on behalf of the claimant.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and whether the decision of the First-tier Tribunal should be set aside.

#### *Submissions – Error of Law*

5. In the grounds of appeal the Secretary of State argues, in summary, as follows.
6. Firstly, it is argued, that there was a material misdirection in law. At paragraph 7 of the decision it is found that the claimant entered the UK as an EEA family member which is incorrect, as set out at paragraph 15 of the decision he entered the UK as a visitor, and so his entry was not as a facilitated extended family member of an EEA national. His application was made on 31<sup>st</sup> March 2021 and at no point prior to the UK leaving the EU had the claimant had his residence facilitated as an extended family member of an EEA national by the Secretary of State. As a result he was not a person covered by the scope of the Withdrawal Agreement.
7. Secondly, it is argued, that there was a failure to give reasons for the decision that s.55 of the Borders, Citizenship and Immigration Act 2009 was relevant to determining this appeal when it was accepted that the claimant, who lives with his parents in the UK, could make another application to the Secretary of State for leave to remain.

#### *Conclusions – Error of Law*

8. An error of law is found by consent in accordance with the consent order signed by Zyber Law for the claimant which I append as Annex A to my decision below. In these circumstances no further reasoning is needed.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by dismissing it.

**Fiona Lindsley**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**11<sup>th</sup> February 2023**

**Annex A**

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

**Appeal No: UI-2022-006307  
[EA/14810/2021]**

**B E T W E E N**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**-and-**

**MASTER IVAN UZZAMAN**

**Respondent**

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**CONSENT ORDER**

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The parties hereby consent to the following:

1. The Respondent is preparing an application for leave to remain with the SSHD, as such does not intend to continue with this appeal.
2. The Respondent accepts that the First-tier Tribunal has erred in law such that that decision shall be set aside and cannot be relied upon in future.
3. The appeal hearing listed on 11 April 2023 be vacated.
4. All further proceedings in this appeal be withdrawn.

Dated: 28 February 2023

**Zyba Law**

PETER DELLER (electronically)

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Zyba Law  
3 Old Montague Street  
London  
E1 5NL  
Ref: 1122.476.SHIM.IVAN  
**Solicitors for the Respondent**

Appeals, Litigation and Admin Review  
Home Office UK Visa and Immigration  
28 Kirby Street, London  
EC1N 8TE  
Ref:  
**Representative of the Appellant**