



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

**Case No: UI-2022-003816
First-tier Tribunal No:
EA/04389/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 27 November 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Ibrahim Omar Ibrahim
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Afzal, Global Migration Solutions UK Ltd

For the Respondent: Mr F Gazze, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 11 April 2023

DECISION AND REASONS

1. The appellant is a national of Somalia. On 28 December 2020 he applied for an EEA family permit to join his half-sister, a national of the Netherlands, in the United Kingdom as an extended family member. The application was considered by the respondent by reference to the requirements set out in Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (“the 2016 EEA Regulations”). The application was refused because the respondent was not satisfied; (a) that the sponsor is a qualified person within the meaning of the regulations, (b) that the appellant is related as stated, to the sponsor and (c) that the appellant is personally and financially dependent upon the sponsor as required for his essential needs.
2. The appellant’s appeal was dismissed by First-tier Tribunal Judge Fox for reasons set out in a decision promulgated on 15 December 2021. The appellant claims the decision of Judge Fox is vitiated by material errors of

law relating to the assessment of the appellant's claim and that the Judge failed to apply the correct test.

3. Permission to appeal was granted by First-tier Tribunal Judge Pickering on 10 August 2022. Judge Pickering said:

"It is arguable that the Judge appears to have misdirected himself on the issue of dependency. The question is whether the appellant is dependent upon the EEA sponsor following the death of his grandmother in 2020 not since 2008."

4. The respondent has filed and served a rule 24 response dated 9 September 2022. The respondent concedes Judge Fox erred in his assessment of the appeal and applied the wrong test. The respondent accepts the decision must be set aside with no findings preserved.

Decision

5. The decision of Judge Fox is extremely brief. The respondent concedes the decision of Judge Fox is vitiated by an error of law. I am satisfied Judge Fox applied the wrong test and failed to carry out the nuanced analysis that is required to determine whether the appellant is dependent on the sponsor for his essential needs and I do not therefore need to say anything further about the grounds of appeal.
6. It follows that I allow the appeal and set aside the decision of First-tier Tribunal Judge Fox.
7. As to disposal, I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both Mr Gazge and Mr Afzal submit that in light of the errors of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved.
8. Having considered the Senior President's Practice Statement at paragraph 7.2, I have decided to remit the appeal to be heard afresh by another judge of the FtT. No findings can be preserved. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

9. The decision of First-tier Tribunal Judge Fox promulgated on 15 December 2021 is set aside.
10. The parties will be notified of a fresh hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 May 2023