



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003699
First-tier Tribunal No: EA/51844/2021
IA/07645/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 October 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

VASYL SAVKIV

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Dirie, instructed by Bindmans Solicitors
For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 18 October 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing to issue him with a residence card under the Immigration (European Economic Area) Regulations 2016 as the extended family member of an EEA national exercising Treaty rights in the UK.
2. The appellant is a national of Ukraine born on 15 May 1994. He applied on 1 December 2020 for a residence card as the extended family member of his sister, a Romanian national exercising Treaty rights in the UK.

3. The appellant's application was refused on 28 January 2021 as it was considered that he had failed to provide sufficient evidence to demonstrate that he was dependent upon his EEA national sponsor immediately prior to entering the UK and that he had failed to provide sufficient evidence to demonstrate that he had been residing with or dependent upon his EEA national sponsor since entering the UK. The respondent was therefore not satisfied that the appellant was dependent upon the EEA national sponsor, for the purposes of Regulation 8 of the EEA Regulations.
4. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Farrelly on 20 February 2023 and was dismissed in a decision promulgated on 12 April 2023.
5. Following a grant of permission to the appellant to appeal Judge Farrelly's decision, the matter came before us to determine whether or not the judge had erred in law in his decision.
6. At the hearing before us, having had the benefit of viewing the transcript of the proceedings before Judge Farrelly, Ms Gilmour conceded that the judge had muddled up the evidence of the witnesses to the extent that the decision was materially flawed. She accepted that the decision had to be set aside. Both parties were in agreement that the appropriate course was for the case to be remitted to the First-tier Tribunal for a *de novo* hearing. Accordingly we set aside Judge Farrelly's decision and directed that the case was to be remitted to the First-tier Tribunal.

Notice of Decision

7. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, with no findings preserved, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Farrelly.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 October 2023