



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006662

First-Tier Tribunal No:
EA/53826/2021
IA/16832/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th April 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Mr A K M Ashikul Haque
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr S Hingora, instructed by ASM Immigration Services
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 17 April 2024

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Bangladesh. On 20 December 2020 he applied for an EEA family permit to join an EEA sponsor in the United Kingdom as the extended family member of an EEA national under Regulation 8 of the Immigration (European Economic Area) Regulations 2016. The appellant claims to be the nephew of Imdad Hak, an Italian

national exercising Treaty rights in the UK. The application was refused because the respondent was not satisfied that the appellant had provided sufficient evidence to establish that he is related to the sponsor as claimed. The respondent also said the appellant had not provided sufficient evidence that any funds transferred by the sponsor are being used to meet the appellant's essential needs. Finally, the respondent noted the sponsor has a wife and at least one dependent child in the UK, and that he is in receipt of state benefits. The respondent was not satisfied that the sponsor is currently able to support the appellant financially or would be able to continue to support him should he arrive in the United Kingdom.

2. The appellant's appeal was dismissed by First-tier Tribunal Judge Codd for reasons set out in a decision dated 22 July 2022.
3. The appellant claims the decision of Judge Codd is vitiated by material errors of law. He claims Judge Codd failed to consider relevant factors, and failed to give adequate reasons for rejecting the appellant's claim that he is related to the sponsor. It is also said that the judge relied upon matters that were either not in issue between the parties, and upon concerns that the sponsor was not given any opportunity to address. The appellant claims Judge Codd erred in the approach to the requirements and criteria set out in the 2016 EEA Regulations and the test applied.
4. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 30 September 2022. Judge Gumsley said:

"As to the substantive Grounds of Appeal, having considered them with care I am persuaded that it is arguable that the FtT Judge made a material error of law. Whilst it may have been right for the FtT Judge to have concerns relating to various aspects of the evidence, it is arguable that in making determinations based on such concerns, when they had not been raised by the Respondent and without affording an opportunity to the Appellant/Sponsor to respond to them, he fell into error. It is also arguable that in using the term 'convinced' the FtT Judge may have been applying a higher standard of proof to his consideration of the Appellant's case."

DECISION

5. At the outset of the hearing before me, Mr Lawson conceded the decision of Judge Codd is vitiated by an error of law. Mr Lawson accepts the judge refers to matters that the appellant and sponsor had no opportunity to address leading to procedural unfairness. I see no reason to go behind that concession 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 Codd.
7. As to disposal, Mr Hingora submits that in light of the nature of the error of law conceded, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Mr Hingora accepts the standard directions issued to the parties highlight that there is a

presumption that, in the event of the Tribunal deciding that the decision of the FtT is to be set aside as erroneous in law, the re-making of the decision will take place at the same hearing. The directions highlight that the parties are expected, therefore, to have complied with rule 15(2A) (by providing any evidence which was not before the FtT) in advance of the 'error of law' hearing.

8. Mr Hingora accepts there has been a wholesale failure by the appellant's representatives to comply with the standard directions that have been issued by the Tribunal in advance of the hearing. The appellant had failed:
 - a. To file and serve a composite electronic bundle which complies with the Guidance on the Format of Electronic Bundles in the Upper Tribunal (IAC).
 - b. To make any request for the services of an interpreter is to be made in writing, as directed.
9. As Mr Hingora was unable to offer any, let alone any reasonable explanation for the failure of the appellant's representatives to comply with the directions, I stood the matter down and called for an explanation from ASM Immigration Services Ltd. A letter was emailed to the Tribunal signed by 'Abdus Masum'. He explains "*The Appellant made a decision, with the utmost reluctance, to wait until the outcome of the error of law hearing before investing any further funds into evidence. This should not be misunderstood to be a concession that no evidence was going to be relied upon but instead a pragmatic approach taken by the Appellant in his circumstances.*". That is wholly unsatisfactory. Compliance with directions is not optional. It is a requirement, and the appellant would only have himself to blame if I go on to remake the decision.
10. As to the failure by the representatives to file and serve the consolidated bundle and make a request for an interpreter as directed, Abdus Masum offers the Tribunal an unreserved apology for not complying with the Tribunal's directions. He states there has been an oversight on their part. He assures the Tribunal "*I will personally review how this could have happened and take steps to ensure that this does not happen again.*". I remind the appellant's representatives that the overriding objective set out in The Tribunal Procedure (Upper Tribunal) Rules 2008 imposes an obligation to cooperate with the Tribunal to deal with cases fairly and justly. Any further failure by the appellant's representatives to comply with directions is likely to be met with appropriate sanctions, including where necessary, the failure being reported to the relevant regulatory body.
11. I am reluctantly persuaded by Mr Hingora that it is not in the interests of justice for me to remake the decision today. I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both Mr Lawson and Mr Hingora submit that in light of the error 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.

12. 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

13. The decision of First-Tier Tribunal Judge Codd is set aside.
14. The appeal is remitted to the First-Tier Tribunal for hearing afresh.
15. The parties will be notified of a fresh hearing date before the First-Tier Tribunal in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 April 2024