



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

Appeal Number: EA/01228/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> January 2018**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**LEVAN MIKELADZE**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Waheed, instructed by M A Consultants (London)

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. First-tier Tribunal Judge Lawrence dismissed Mr Mikeladze's appeal against the decision to refuse him a residence card as the spouse of an EEA National exercising Treaty Rights.
2. The judge failed to have regard to evidence that was relied upon; in particular:
  - a. His son had been granted entry clearance as the stepson of Mr Mikeladze's spouse;
  - b. Bank statement showing her income from her claimed employment;

- c. Her registration as self-employed with HMRC.
3. The judge failed to make any findings on the credibility of the appellant and his partner and their oral evidence and fails to give adequate reasons for rejecting the documentary evidence of the receipt books or why individuals would sign contracts.
  4. Ms Willocks-Briscoe stated that she could not object to the grounds as set out in the application for permission to appeal and upon which permission had been granted.
  5. For all these reasons, I am satisfied that there is an error of law such that the decision of the First-tier Tribunal is set aside
  6. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
  7. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier Tribunal with directions or remake it for myself.
  8. The Practice Statement dated 25<sup>th</sup> September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:  
  
"7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:  
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or  
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
  9. In this case there has been an overwhelming failure to have regard to evidence that was before the First-tier Tribunal or to make reasoned findings. Accordingly I remit the appeal to the First-tier Tribunal to be heard afresh.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit it to the First-tier Tribunal to be remade.

Date 3<sup>rd</sup> January 2018



Upper Tribunal Judge Coker