



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

Appeal Number: EA/02051/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2019**

**Decision and
Promulgated
On 03rd April 2019**

Reasons

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**HARIS ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Philip Nathan, Counsel instructed by Hubers Law Partners

For the Respondent: Mr David Clarke, a Senior Home Office Presenting Officer

**DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him a residence card as the extended family member of his uncle, a French citizen and therefore an EEA national, who is said to be exercising Treaty rights in the United Kingdom.

2. The sponsor did not attend the First-tier Tribunal hearing, nor was the appellant present or represented at that hearing. The First-tier Judge proceeded in the absence of the appellant and sponsor and dismissed the appeal. The appellant appealed to the Upper Tribunal, stating that he had made an adjournment request by fax before the First-tier Tribunal hearing which had not been taken into account when the appeal was considered.
3. Permission to appeal to the Upper Tribunal was granted on the basis that such an adjournment request had been sent to the First-tier Tribunal but not linked to the file considered by the First-tier Judge, leading to procedural unfairness.
4. At the hearing today, it was common ground that the First-tier Tribunal did materially err in law in dealing with the appeal on the basis that the appellant had chosen not to appear or be represented, without explanation.
5. No fault attaches to the First-tier Judge who was not aware that an adjournment request had been received, but there was nevertheless procedural unfairness such that the parties agree that this is a case where the decision of the First-tier Tribunal must be set aside, and that no written reasons are required.
6. The requirements of sub-paragraphs 40(3)(a) and 40(3)(b) of The Tribunal Procedure (Upper Tribunal) Rules 2008 [as amended] are met. I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.

Decision

7. I set aside the decision of the First-tier Tribunal.
8. The decision in this appeal will be remade afresh in the First-tier Tribunal, with no findings of fact or credibility preserved.

Signed: **Judith A J C Gleeson**
2019

Date: 20 March

Upper Tribunal Judge Gleeson