



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/08267/2016**

Appeal Numbers:

EA/0

0990/2018

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 26 April 2019

Promulgated

On 08 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

**MUHAMMAD QASIM GULRAIZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:

For the Appellant: Mr A Badar, Counsel instructed by Ashton Ross Law Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

This is the appellant's appeal against the decision of First-tier Tribunal Judge Davidson promulgated 12 February 2019 dismissing his appeal against the decision of the Secretary of State dated 21 June 2016 to refuse his application made for entry clearance as an extended family member to join his sister-in-law sponsor, a Romanian citizen married to his brother, Mr Nasir.

First-tier Tribunal Judge Grant-Hutchison granted permission to appeal on 20 March 2019 stating:-

“It is arguable that the Judge has misdirected himself by failing to give adequate reasons as to why the Appellant has failed to show that he is dependent on the Sponsor.”

For the reasons set out below I find that there was an error of law in the making of the decision of the First-tier Tribunal, such as to require it to be set aside and remade in the First-tier Tribunal.

At the outset of the hearing Mr Jarvis very fairly made observations on behalf of the Entry Clearance Officer in respect of the judge’s decision at paragraph 23 where the judge on the one hand found both witnesses to lack credibility and yet in the same paragraph prefer the evidence of Mr Nasir on the basis that his responses were more plausible and that he was more likely to know the correct situation relating to his parents and his brother. The judge has not explained why both witnesses were found to lack credibility and there is a tension in that paragraph between the finding that they lacked credibility and apparently accepting the brother’s evidence, and the brother’s evidence was that the appellant was dependent on his partner as of necessity. The reasoning is not clear and the paragraph is difficult to understand. The judge was faced with a large quantity of papers and one must have sympathy with a judge in those circumstances, however, it appears from the very brief findings that no real engagement was made of the documentary evidence, including evidence which has been shown to Mr Jarvis today from that bundle demonstrating the appellant was, for example, buying food for himself, therefore suggesting a degree of dependency. In the circumstances Mr Jarvis on behalf of the Entry Clearance Officer accepts that there are problems with the decision and that it cannot be defended. This is not a concession that dependency has been established, but it does amount to an acceptance of an error of law in the decision.

Mr Badar for his part submits that the errors are material and that the matter needs to be reheard. I fully agree. Both parties invited me to remit this matter to the First-tier Tribunal. Where a decision of the First-tier Tribunal has been set aside Section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either the case is remitted to the First-tier Tribunal with directions or it must be remade by the Upper Tribunal. The scheme of the Tribunals, Courts and Enforcement Act 2007 does not assign the function of primary fact-finding to the Upper Tribunal. Where the facts or findings are unclear on a crucial issue at the heart of the appeal as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal Judge vitiates the findings and the conclusion from those so that there has not been a valid determination of the issues.

In all the circumstances, and at the invitation or request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President’s Practice Statement at paragraph 7.2. I find it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh with no findings of fact preserved.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.

Signed DMW Pickup
Deputy Upper Tribunal Judge Pickup
Dated 1 May 2019

Consequential Directions

- (1) The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross.
- (2) The appeal is to be decided afresh with no findings of fact preserved.
- (3) The estimated length of hearing is one-and-a-half hours.
- (4) The appeal may be listed before any First-tier Tribunal Judge with the exception of Judge Davidson and Judge Grant-Hutchison.
- (5) No interpreter is required.

Anonymity

I considered whether any parties required protection of an anonymity direction. The First-tier Tribunal did not make any such direction. In the circumstances, I make no direction.

To the Respondent Fee Award

I have considered whether to make a fee award, however I make no fee award because the outcome of the appeal remains to be decided.

Signed DMW Pickup
Deputy Upper Tribunal Judge Pickup
Dated 1 May 2019