



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

**Appeal Number: UI-2022-001625  
On appeal from EA/04097/2021**

**THE IMMIGRATION ACTS**

**Heard at: Manchester CJC  
On: 26<sup>th</sup> September 2022**

**Decision & Reasons Promulgated  
On the 25 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**The Secretary of State for the Home Department**

Appellant

**And**

**Mohsan Ali  
(no anonymity direction made)**

Respondent

**For the Appellant: Mr Tan, Senior Home Office Presenting Officer  
For the Respondent: no appearance**

**DECISION AND REASONS**

1. The Respondent is a national of Pakistan born on the 20<sup>th</sup> May 1993. On the 25th January 2022 the First-tier Tribunal (Judge Austin) allowed his appeal under the Immigration (European Economic Area) Regulations 2016. The Secretary of State now has permission to appeal against that decision.

2. The matter in issue before First-tier Tribunal Judge Austin was whether the Respondent Mr Ali was entitled to a family permit in recognition of his status as the 'extended family member' of his cousin in the UK, a Mr Shehzad Chaudry. The issue between the parties was whether Mr Ali was dependent upon Mr Chaudry for his essential living needs, as claimed. Judge Austin accepted that he was, and allowed the appeal.
3. The matter in issue before me is whether, in so doing, the First-tier Tribunal acted properly and fairly.
4. The grounds of appeal allege that the Tribunal's decision betrays a lack of care, or perhaps understanding about what the case is about. Mr Ali is Mr Chaudry's cousin. He was the only appellant in the case. The recitation of the evidence nevertheless focuses on the situation of the Sponsor's sister and makes reference to other family members. It is not apparent from the face of the decision how this evidence was relevant to Mr Ali. Furthermore the Tribunal appears to be under the impression that the Secretary of State was not represented, conducted no cross examination of Mr Chaudry, and made no submissions. These are all factual errors: the Secretary of State was represented. It is apparent from this misapprehension that the Tribunal cannot have given any consideration to the Secretary of State's case when it made its decision.
5. At the hearing before me there was no appearance on behalf of Mr Ali, nor attendance by his Sponsor. I considered whether it was necessary in the interests of justice to adjourn the matter and decided, for the following reasons, that it was not. I am told by Tribunal administrative staff that the Notice of Hearing was served on the 15<sup>th</sup> August 2022 to the last correspondence address we had on file. Even if the Appellant is without representation, it was open to Mr Chaudry to appear. Further it is difficult to see what he could have said in response to the points made by the grounds of appeal, which are not quarrels with his cousin's case, but rather errors made by the Tribunal. In those circumstances I proceeded to determine the appeal.
6. The case was heard on the 28<sup>th</sup> October 2021 but a decision not made for some three months: the decision is dated the 25<sup>th</sup> January 2022. It is possible that in that time, and with the intervening workload, the Tribunal's recollection of the case was dimmed. Mr Ogbewe, who represented the Home Office, is recorded on the frontsheet as being in attendance, but not as having featured in the case: the decision records at paragraph 3: "there was no representative present for the Respondent". Furthermore the body of the reasoning refers to characters who do not, as far as I can tell, feature anywhere in this case. I am satisfied that an unfairness has arisen in that the Tribunal's decision does not reflect or consider the

case put for the Respondent. Further irrelevant matters are taken into account. The decision is set as

**Decisions and Directions**

7. The decision of the First-tier Tribunal contains errors of law such that the decision must be set aside.
8. The decision in the appeal will be remade following a hearing de novo in the First-tier Tribunal by a judge other than Judge Austin.
9. There is no order for anonymity.

Upper Tribunal Judge Bruce  
26<sup>th</sup> September 2022