



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000560
EA/01793/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 20 June 2022**

**Decision & Reasons Promulgated
On the 11 January 2023**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MOHIT GUMBER

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Saifdlahi, Counsel

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

(extempore)

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the Secretary of State refusing the appellant an EEA family permit.
2. With respect to the First-tier Tribunal Judge, the decision is in many ways careful and internally logical but there are two things about the decision which

concern me greatly. The first is that it seems perfectly clear from what has been said in the papers and supported by a detailed statement from Miss Jamil Dhanji, Counsel, that the First-tier Tribunal was presented with the sponsor trying to join online at the last minute and complaining that they did not have proper notice and were not properly prepared. That really should have been reflected in the First-tier Tribunal's decision just so that everybody knew it was in the judge's mind. That is an omission which concerns me. The Decision and Reasons does not really indicate that that happened at all.

3. Now, I fully appreciate what has been set out in the Rule 24 notice, which, regrettably, was not available to me until this morning, which is that, on the judge's findings, it does not make any difference because the judge has believed the evidence that was before her and found that that was inconsistent with the necessary finding (from the appellant's point of view) of dependency. The problem with that is it assumed that the evidence would have been exactly the same if the people who gave that evidence had been prepared properly. It may have been but there may be other dimensions or elements to this that I just do not know about and the First-tier Judge did not know about because the parties effectively representing the appellant were not prepared properly.
4. This is a case where something has gone wrong. I doubt if I will ever get to the bottom of it properly but I am satisfied that it is at least probable that the sponsor genuinely had no idea that the hearing was going ahead and that the appellant's case was not presented as it should have been. This is a very important decision for the appellant and being dismissed in this way would leave a very strong sense of grievance that I do not think is right.
5. I have taken the points indicated by Ms Everett but I am persuaded that the right thing to do here is to set aside the decision for a procedural irregularity. I direct that the case be heard again in the First-tier Tribunal.

Notice of Decision

The appeal is allowed. I set aside the decision of the First-tier Tribunal and I direct that the appeal be reheard in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

28 December 2022