



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005423

First-tier Tribunal No: EA/06852/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th February 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MUHAMMAD NADEEM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hingora, Counsel, instructed by MCR Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 9 February 2024

DECISION AND REASONS

Introduction

1. The appellant appeals with permission a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Farrelly) sent to the parties on 18 September 2023. The underlying appeal concerns a challenge to a

decision of an entry clearance officer not to grant the appellant an EEA Family Permit under the Immigration (European Economic Area) Regulations 2016. This decision is dated 2 March 2021.

2. The respondent in these proceedings has erroneously been identified by the appellant both in the First-tier Tribunal and the Upper Tribunal as the Secretary of State for the Home Department. The decision was issued by an entry clearance officer. However, no point is taken in respect of the erroneous identification of the respondent to these proceedings.

Discussion and Decision

3. At the outset of the hearing Mr McVeety conceded the error of law appeal on behalf of the respondent, though the underlying appeal continues to be contested.
4. In simple terms, the respondent accepted that the Judge set out the applicable legal burden, and then did not follow it. Further, it was accepted by the respondent that the Judge made no adequate findings as to the core issue of dependency.
5. Unsurprisingly, Mr Hingora did not challenge the approach adopted by Mr McVeety.
6. I consider the position adopted by the respondent to be proper in the circumstances, and consequently the only course is to set aside the decision in its entirety.

Remittal

7. Both representatives requested that the matter be remitted to the First-tier Tribunal. I observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). As the appellant has not to date enjoyed adequate assessment of his appeal, I consider it fair and just to remit this matter to the First-tier Tribunal.

Decision

8. The decision of the First-tier Tribunal sent to the parties on 18 September 2023 is subject to material error of law and is set aside.
9. No findings of fact are preserved.

10. The appeal is remitted to the First-tier Tribunal sitting in Manchester to be heard by any Judge other than Judge of the First-tier Tribunal Farrelly.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 February 2024