



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/31633/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 September 2014

Determination Promulgated  
On 18 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

MR MURAT OZYURT  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. S. K. Abbas, Legal Representative.

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

**DECISION**

1. No application for anonymity has been made in these proceedings and there is no reason why such an order should be made.

2. The appellant is a citizen of Turkey born on 10 March 1982. He applied to the respondent for a permanent right of residence based upon retained rights of residence grounds by reason of being separated from his former EEA spouse by the time he submitted his application for a permanent right of residence. His application was refused by the respondent on 15 July 2013.
3. He appealed and in a determination promulgated on 15 May 2014 Judge of the First-tier Tribunal S Meah allowed the appellant's appeal to the limited extent that it be remitted back to the respondent for reconsideration on Article 8 grounds.
4. The appellant applied for permission to appeal. This First-tier application was refused by Judge of the First-tier Tribunal Ford on 5 June 2014.
5. However the application was renewed to the Upper Tribunal and granted by Upper Tribunal Judge Reeds on 24 July 2014. Her reasons for so doing were :-
  - “1. It is an arguable error of law for the judge to reach the conclusion that he could not be the primary decision maker in relation to Article 8 (see paragraph [9]) when it was a ground of appeal raised by the appellant, as Section 86(2) requires the Tribunal to determine ‘any matter raised as a ground of appeal.’ It is also an arguable error of law to have ‘remitted back to the respondent for reconsideration’ in those circumstances, irrespective of the fact that both parties appeared to agree to that course. In the grounds there is reference to the representative not agreeing to such remittal, despite the determination reflecting such a consideration. This will be required to be evidenced if relied upon although in light of my earlier comments the judge may have been in error in any event.
  2. The grounds are arguable and I grant permission.”
6. Thus the appeal came before me today.
7. Mr Abbas stated that the only ground he relied on was the failure of the Judge to proceed at the hearing to deal with the appellant's Article 8 claim, and that the judge had materially erred in not wanting to become the primary decision maker resulting in him allowing the appeal to the above mentioned limited extent.
8. Ms Everett agreed with the submissions of Mr Abbas and invited me to remit the appeal back to Judge S. Meah in the First-tier Tribunal to deal with the Article 8 issues he should have determined.
9. On my own analysis the judge has materially erred. It was incumbent upon him, given that Article 8 was raised in the grounds of appeal, to deal with that issue at the hearing within the First-tier Tribunal.
10. Therefore the appellant's decision to not pursue his claim under the EEA Regulations stands and so the singular outstanding issue to be determined is that of Article 8.

11. Beyond therefore the withdrawal of the appeal against the EEA decision I set Judge S. Meah's determination aside and the appeal will proceed to a remitted hearing in the First-tier Tribunal where the singular issue will be Article 8 alone.
12. In deciding whether to set aside the decision of the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007, I can dispose of the appeal in one or two ways, either by remitting the case to the First-tier Tribunal or by remaking the decision. The choice is regulated by paragraph 7 of part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal which only contemplates remittal in very limited circumstances. This though is such a case. The appellant has been deprived of a fair hearing in respect of his Article 8 claim and the opportunity of putting his case forward to be considered by the First-tier Tribunal. In those circumstances I remit the case to the First-tier Tribunal subject to the attached directions. I do so with the consent of both representatives before me today.

Signed

Date 18 September 2014.

Deputy Upper Tribunal Judge Appleyard

**DIRECTIONS FOR REMITTAL TO THE FIRST-TIER TRIBUNAL**

1. The appeal is to be listed at Taylor House, before Judge of the First-tier Tribunal S Meah, on the first available date.
2. The time estimate for the hearing is two hours.
3. No interpreter is required.
4. In the event of either party wishing to file and serve additional evidence this must be done no later than five working days prior to the date of hearing.

Signed

Date 18 September 2014.

Deputy Upper Tribunal Judge Appleyard