



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/16231/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On April 13, 2015**

**Determination Promulgated
On May 6, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MALIK FARRUKH AZAM
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Tarlow (Home Office Presenting Officer)

For the Respondent: Miss Qureshi, Counsel.

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The Appellant is a citizen of Bangladesh. The appellant is married to Atiqa Kauser and on February 21, 2014 he applied for a variation of his leave to remain due to his continuing family and private life with his wife. The respondent refused his application on March 17, 2014 on

the basis the Immigration Rules were not met and took a decision to issue directions for his removal pursuant to Section 47 of the Immigration, Asylum and nationality Act 2006.

3. The Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended, on April 3, 2014. The matter came before Judge of the First-tier Tribunal Shamash (hereinafter called "the FtTJ") on November 17, 2014 and she allowed his appeal in a determination promulgated on January 5, 2015.
4. The respondent lodged grounds of appeal on January 12, 2015. Permission to appeal was granted Judge of the First-tier Tribunal Robertson on February 12, 2015.
5. The matter came before me on the date set out above. The appellant was in attendance and represented by his counsel.

PRELIMINARY ISSUE

6. Miss Qureshi acknowledged that the Tribunal in SD -v- Secretary of State for the Home Department (Treatment of post-hearing evidence) [2008] UKAIT 00037 made it clear that if relevant material was submitted after the hearing and the FtTJ was satisfied it could be admitted then the hearing should be reconvened or written submissions requested.
7. In this appeal the FtTJ received evidence of income after the hearing date but neither reconvened the hearing nor requested written submissions. She in fact simply remitted the decision back to the respondent so she could consider the evidence further.
8. I indicated to Ms Qureshi that this amounted to an error in law because of what the Tribunal stated in SD and there had been no basis to remit the decision back to the respondent because a lawful decision had already been taken. Neither Miss Qureshi nor Mr Tarlow objected to this finding.
9. I considered Part 3, Section 7.1 to 7.3 of the Practice Statement.
10. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

"Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier

Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

- 11. Both parties agreed that the appeal should be remitted back to the FtTJ for her to deal with the matter. In light of the Practice Direction I agreed the case should be remitted to the First-tier Tribunal and I issued directions to ensure the speedy conclusion of the appeal.
- 12. The parties should ensure compliance with any directions issued in light of the fact the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 will apply to this appeal from hereon.

Decision

- 13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
- 14. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.
- 15. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made to date and I see no reason to make an order now.

Date: **May 6, 2015**

DEPUTY UPPER TRIBUNAL JUDGE ALIS
IMMIGRATION AND ASYLUM CHAMBER