



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

Appeal Number: IA/26035/2013

THE IMMIGRATION ACTS

**Heard at Field House
on 3 December 2015**

**Decision and Reasons
Promulgated
On 14 December 2015**

Before

**THE RIGHT HONOURABLE LORD BOYD
UPPER TRIBUNAL JUDGE HANSON**

Between

ZAHEER POCHEE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cutting Solicitor of Slough Immigration Aid

For the Respondent: Mr P Duffy Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 14 October 2015 the Upper Tribunal conducted a Case Management Review Hearing at which the terms of the Court of Appeal order dated 8 July 2015 were reviewed. Directions were given to enable the Upper Tribunal to further consider the Appellants challenge to the order of First-tier Tribunal Judge Rowlands.

2. In the interim the Respondent has received additional information from HMRC and on the basis of that information issued the Appellant a Residence Card on 27 November 2015.
3. We set aside the determination of First-tier Tribunal Judge Rowlands aside on the basis the Judge has, arguably, failed to give adequate reasons for findings made, failed to make findings on all the available evidence and, through no fault of his own, made an error of fact in the assessment of the evidence.
4. We grant permission to the Secretary of State to withdraw the decision to refuse the application for a Residence Card in light of the recent developments.
5. There remains nothing before us upon which we are required to make a decision.

Decision

6. **The First-tier Tribunal Judge materially erred in law. We set aside the decision of the original Judge.**
7. **We grant permission to the Respondent to withdraw the decision under challenge as a result of which there is nothing extant before us upon which we are required to make a decision.**

Anonymity

8. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.
9. We make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Fee Award

Note: this is **not** part of the determination.

10. We have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

We have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals.

We make no fee award.

Reasons: The Appellant succeeded in his application on the basis of material not before the decision maker but received subsequently from HMRC. There was no obligation upon the Respondent to obtain such evidence although she did so voluntarily. Amos v SSHD [2011] EWCA Civ 552 considered.

Signed.....
Upper Tribunal Judge Hanson

Dated the 3 December 2015