



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

Appeal Number: OA/05224/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 9th March 2015**

**Decision & Reasons Promulgated
On 20th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ENTRY CLEARANCE OFFICER - BOMBAY

Appellant

and

**BARTHI DEVIDAS BHAI
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: No legal representation

DECISION AND REASONS

1. The Entry Clearance Officer (ECO) appeals against a decision of Judge of the First-tier Tribunal Ghaffar (the judge) promulgated following a hearing on 4th November 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to her as the Claimant.
3. The Claimant is an Indian citizen born on 8th December 1965 who applied for permission to enter the United Kingdom as the family member of a

European Economic Area national, that being her son Darshan Devidas Bhai.

4. The application was refused on 24th March 2014 with reference to regulation 7 of The Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). The ECO was not satisfied that the Claimant was dependent upon her son, to whom I shall refer as the Sponsor.
5. The appeal was heard by the judge on 4th November 2014 and after hearing evidence from the Sponsor, the judge found that the Claimant was dependent upon the Sponsor and allowed the appeal.
6. This caused the ECO to apply for permission to appeal to the Upper Tribunal. The grounds were that the judge had made findings without giving adequate reasons for those findings. The decision of the First-tier Tribunal did not provide sufficient details as to what documentary evidence had been considered.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Lambert and I set out below paragraphs 2 and 3 of the grant of permission;
 - “(ii) The judge’s decision is brief in the extreme, fails to address the issues raised by the Respondent and at paragraph 11 is devoid of evidence based reasoning for the findings made.
 - (iii) There are therefore manifestly arguable errors of law disclosed by the application”.
8. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

9. The Sponsor attended the hearing. He indicated that he did not require an interpreter. The Sponsor also indicated that he was content to proceed with the hearing without legal representation.
10. I explained to the Sponsor the procedure that would be adopted throughout the hearing. I explained the role of those within the hearing room, and that this was an application made on behalf of the ECO, who contended that the First-tier Tribunal had made a mistake of law.
11. The Sponsor confirmed that he had seen the decision of the First-tier Tribunal, together with the application made for permission to appeal, and the grant of permission.
12. I then heard submissions from Mr Mills who relied upon the grounds contained within the application for permission to appeal. I was asked to find that the judge had not followed the guidance in Budhathoki [2014] UKUT 00341, and had failed to make adequate findings, and therefore the

ECO was unclear as to what evidence had been taken into account, and why the appeal had been allowed.

13. The Sponsor contended that the judge had not erred in law, and therefore the decision should stand.
14. Having considered all the documents before me, and taken into account the representations made by Mr Mills and the Sponsor, I found that the decision of the First-tier Tribunal was flawed by error of law and must be set aside.
15. In my view the judge did not address the issues raised by the ECO in the refusal notice. Those issues should have been set out and analysed, and findings made upon them.
16. The head note to Budhathoki is set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

17. It is not clear what documentary evidence the judge considered in reaching his decision to allow the appeal. The judge did not identify and resolve key conflicts in the evidence, and the findings made, which are contained within paragraph 11 of the decision, do not make it sufficiently clear why the appeal was allowed. The judge records that there is adequate evidence of dependency before him, but does not specify what this evidence is, and then refers to the requirements of the Immigration Rules being satisfied, whereas this is a case to be decided under the 2006 EEA Regulations.
18. The decision of the First-tier Tribunal was set aside with no findings preserved. Therefore the decision needed to be re-made. Mr Mills submitted that as findings of fact needed to be made, it was appropriate to remit this appeal to the First-tier Tribunal. The Sponsor indicated that he was content to have the decision re-made by the Upper Tribunal.
19. I decided that it was appropriate to remit the appeal to the First-tier Tribunal, having taken into account the Senior President's Practice Statement 7.2 which states;
 - 7.2 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.

20. My view is that the extent of the judicial fact-finding required means that it is appropriate to remit the case to the First-tier Tribunal and it would be inappropriate for the Upper Tribunal to be the primary fact-finding Tribunal.
21. The appeal before the First-tier Tribunal will take place at the hearing centre at Sheldon Court, Birmingham. The parties will be advised in writing of the date. The appeal will be heard by a First-tier Tribunal Judge other than Judge Ghaffar.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Anonymity

No anonymity direction was made by the First-tier Tribunal, and there has been no application for anonymity. The Upper Tribunal makes no anonymity order.

Signed _____ Date 10th March 2015
Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

Any fee award must be considered by the First-tier Tribunal.

Signed _____ Date 10th March 2015
Deputy Upper Tribunal Judge M A Hall