



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08194/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2018

Decision & Reasons Promulgated
On 21 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

MR SITHARTHAN VEPULLE SANGARAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis, HOPO

For the Respondent: No legal representative. His Sponsor appeared on his behalf.

DECISION ON ERROR OF LAW

1. The Entry Clearance Officer has been granted permission to appeal the decision of First-tier Tribunal Judge Ruth allowing the appeal of the respondent against the Entry Clearance Officer's decision to refuse him leave to enter the United Kingdom with a view to settlement as the adult dependent relative of his son and daughter-in-law.
2. The respondent will from now on be referred to as the applicant.
3. The applicant is a citizen of Sri Lanka born on 9 March 1954. He made an application to join his son who is a British citizen and married to his spouse who is an EEA national exercising treaty rights in the United Kingdom. The judge rightly stated that the

refusal letter submitted by the ECO was plainly in error. Indeed, the reasons stated in the refusal letter that the judge had were not related to the applicant at all. The judge determined the appeal without making an effort to obtain the correct refusal letter from the ECO.

4. The judge determined the appeal on the papers. I have seen a letter on file dated 18 February 2018 from the applicant's sponsor, Mr Sitharthan Sangeeth, to the case worker at the First-tier Tribunal in which he responded to the issues raised by the ECO in his reasons for refusing his father's application. I am not sure whether this letter was on the file at the time the judge was determining the appeal. If it was and the judge had seen it, he would not have made the error that is now being complained of by the ECO. The complaint is that the judge wrongly assumed that the appeal was challenged under the EEA Regulation and that it was not open to the judge to consider the appeal under the EEA Regulations. The ECO's decision was based on the applicant not meeting the requirements under the Immigration Rules for an adult dependent relative. The ECO's relevant decision is now on the Tribunal file.
5. It is obvious that the judge failed to properly consider the applicant's appeal. Accordingly, the judge's decision cannot stand.
6. The applicant's appeal is remitted to Taylor House for re-hearing by a judge other than First-tier Tribunal Judge Ruth.

No anonymity direction is made.

Signed

Date: 17 September 2018

Deputy Upper Tribunal Judge Eshun