



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

Appeal Number: HU/19304/2019

THE IMMIGRATION ACTS

**Heard at Bradford
Via Teams
On 15 October 2021**

**Decision & Reasons Promulgated
On 16 November 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**EKS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rutherford

For the Respondent: Mr Bates, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan who was born in 2001. He appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer dated 18 October 2019 refusing for entry clearance on the basis of his family life. The First-tier Tribunal, in a decision promulgated on 9 March 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing in the Upper Tribunal, Mr Bates, who appeared for the Entry Clearance Officer, told me that the respondent did not oppose the appeal. At [43], the judge had made a mistake of fact when he stated that the identity documents of the appellant's mother had not been referred to in her death certificate when reference had been made. Secondly, also at [43], the judge had reached a finding (that, notwithstanding the production of evidence of a death certificate, he was not satisfied that the appellant's mother had died) when the fact of her death had not been contested by the Entry Clearance Officer and the appellant and his representative had not been given the opportunity to make addressing the judge's concerns which had not been expressed at the hearing. Mr Bates accepted that the judge had proceeded in a manner which had been unfair to the appellant.
3. In the circumstances, I set aside the decision of the First-tier Tribunal. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*. None of the findings of fact of the First-tier Tribunal shall stand.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

LISTING DIRECTIONS: return to First-tier Tribunal; not Judge Shepherd; first available date at Birmingham; no interpreter.

Signed

Date 23 October 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.