



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

**Appeal Number: EA/02858/2021
UI-2022-000396**

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On the 5 August 2022**

**Decision & Reasons Promulgated
On the 17 November 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MUHAMMAD ASHRAF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 16 April 1974. He appeals to the Upper Tribunal against a decision of the First-tier Tribunal dismissing his appeal against the refusal, on 3 February 2021, of his application for an EEA Family Permit to join his Italian national brother.
2. The grant of permission reads as follows:

It is apparent from the Respondent's decision that there was one issue in this matter and this was whether the EEA national was exercising Treaty Rights. It would appear that the Sponsor produced evidence which would

tend to confirm that he was. However, the Judge then went on to consider matters with which the Respondent had not been concerned without giving the opportunity to the Appellant and/or the Sponsor to respond to those matters. He then went on to dismiss the appeal.

3. At the Upper Tribunal initial hearing, Mr McVeety, who appeared for the Secretary of State, told me that the respondent considered that the judge had fallen into error for the reason identified in the grant of permission. He agreed, as *per* the grounds, that 'the Respondent [had] neither challenged [n]or question[ed] the relationship of the Applicant with his EEA national brother nor the financial dependency.'
4. I agree. The judge has dismissed the appeal for reasons which had not been raised by the respondent at the time of her decision or subsequently. His determination of the appeal was, in the circumstances, unfair as the appellant was denied the opportunity to make representations on the matters raised for the first time by the judge (the appellant's relationship with his sponsor) and which, arguably, the respondent does not dispute. Accordingly, the decision of the First-tier Tribunal is set aside. There will need to be a further fact-finding exercise which is better conducted in the First-tier Tribunal.

5. 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.

DIRECTIONS:

- (i) The decision of the First-tier Tribunal having been set aside, the appeal is returned the First-tier Tribunal (not Judge J G Raymond) for that Tribunal to remake the decision.
- (ii) The appeal will be determined on the papers unless the appellant notifies that the First-tier Tribunal within 14 days of receiving this decision that he wishes to have an oral hearing. If an oral hearing is required, it shall take place face to face at the First-tier Tribunal Manchester. If an interpreter is required, the appellant must notify the First-tier Tribunal no less that 21 days prior to the date fixed for the hearing.

Signed
Upper Tribunal Judge Lane

Date 2 October 2022