



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-001710

First-tier Tribunal No: EA/07042/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 28 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**BILAL BASHIR  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Asif Hussain Din Shakina ( the sponsor)  
For the Respondent: Mr Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 5 September 2023

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Jepson) (hereinafter referred to as the "FtTJ") who dismissed the appeal against the decision made to refuse the application for a family permit as a dependent family member of an EEA national in a decision promulgated on 21 February 2022 .
2. The First-tier Tribunal did not make an anonymity order and no grounds have been advanced on behalf of the appellant to make such an order.
3. The background to the appeal is set out in the evidence and in the decision of the FtTJ. The appellant applied for a family permit as a family member of a relevant EEA citizen, namely the sponsor, who holds a Spanish passport and is resident in the United Kingdom in an application made on 8 December 2020.
4. The application was refused by the Entry Clearance Officer (ECO) with reasons in the refusal dated 23 March 2021. The ECO did not accept the appellant's relationship to the EEA sponsor, and the family registration certificate was not accepted as reliable evidence. As to the issue of dependency, the ECO

acknowledged that the appellant had submitted several money transfers however no other documents had been provided which demonstrated the appellant's circumstances in Pakistan, such as income and expenditure, his family circumstances and his essential living needs.

5. For those reasons, the ECO was not satisfied that the appellant was related as claimed or that he was dependent on a relevant EEA citizen therefore did not meet the requirements for a family permit. The application was therefore refused.
6. Following the refusal decision, the appellant lodged his own grounds of appeal and has been unrepresented through the course of the proceedings. After the issue of the grounds, the appellant made a request for the appeal hearing to proceed on the papers. It appears that following that request, no further directions were sent as it was later recorded by the Tribunal that neither party had provided any bundles of documentary evidence. It is the appellant's case that he last had contact from the Tribunal on or about 16 June 2021.
7. The matter was listed for a case management review before a FtTJ which took place on 8 December 2021. At that hearing the FtTJ noted that there had been no bundles filed or served from either party and proceeded to give directions for the further hearing of the appeal which included the filing and serving of the evidence. Paragraph 6 of the directions stated that the appeal would be listed whether or not the bundles had been lodged and sent and in the absence of such bundles the appeal would be determined on the basis of the evidence that was before the Tribunal. It was also directed at paragraph 10 that 14 days were given to either party to state whether the directions were inappropriate or incorrect.
8. In accordance with the directions the appeal was listed as a paper appeal which came before the FtTJ in February 2022. The FtTJ noted at paragraph 8 that in relation to the appellant the appeal form had listed a large number of documents but that the documents "had not been provided to the Tribunal". At paragraphs 14-15 of his decision, the FtTJ recorded the outcome of the case management review hearing and that despite the directions, neither party had served any documents. It was further stated that "unusually, the respondent did not respond, albeit via a standardised document indicating no further review her position would be taking place." The FtTJ therefore considered the contents of the IAFT-6 appeal form and refusal letter as no other documents had been received by the Tribunal. The FtTJ noted that there had been a list of documents in the appeal form, but he could not take that evidence into account as it had not been provided. At paragraph 18 the FtTJ referred to the relationship but noted that the difficulty in establishing it was the absence of documents submitted and as he had not seen the documents mentioned in the refusal or the grounds of appeal. In similar terms the FtTJ considered that this applied to the question of dependency as the refusal mentioned transfer receipts, but no information was given as to the number, or the amounts and no documents has been submitted. He also noted the lack of anything setting out the circumstances of the appellant's sponsor. The judge therefore concluded that the burden lay on the appellant to demonstrate that the Regulations had been met and "no evidence has been supplied" therefore he dismissed the appeal.
9. The appellant sought permission to appeal. In those grounds he referred to having received an acknowledgement of his notice of appeal in June 2021 and that this was the last time he had received any correspondence from the

Tribunal . He referred to having sent an email on 24 December 2021 asking for an update but did not receive any response and then sent a reminder email on 19 February 2022 and as a result he received the decision . The grounds state that he had not been able to provide a formal bundle because he was waiting for the Tribunal directions and also waiting for the respondent's bundle which he had never received. He did not have an email address to file and serve the appellant's bundle. He further stated that he had never received the case management directions nor was he aware of the review and had he received them he would have complied with the directions . The grounds state that he had no opportunity to put in evidence of his own or to participate meaningfully in the appeal and asked for the decision to be set aside and to be heard again at the First-tier Tribunal.

10. Permission to appeal was granted by FtTJ Adio on 22 April 2022 who identified that there was an arguable error of law based on procedural irregularity in light of the email correspondence sent by the appellant to the Tribunal and which had been set out in the grounds for permission to appeal.
11. The appeal came before the Upper Tribunal. The appellant's sponsor attended along with his brother and the respondent was represented by Mr Bates, Senior Presenting Officer. In addition there was a court interpreter to assist the sponsor in the proceedings. Both the interpreter and the sponsor indicated that there were no problems in understanding each other during the course of the hearing. The sponsor confirmed that he relied upon the grounds of appeal document sent recently by email.
12. Shortly before the hearing the appellant provided further evidence in an email and an explanation of the events in a document entitled "grounds of appeal" and in addition provided email PDFs and also a screenshot of emails. In 2 later emails sent he provided a large bundle of documents amounting to 147 pages. The sponsor confirmed that he relied upon the grounds of appeal document sent recently by email setting out the events before the FtT hearing.
13. Mr Bates on behalf the respondent confirmed that he did not have any of those documents that had been sent to the Tribunal and was unaware of their contents. The documents that were relevant to the error of law hearing ( the first email and the documents attached) were therefore provided to Mr Bates so that he could consider those documents.
14. When the appeal resumed and having had sight of the relevant documents recently sent by the appellant by email, some of which were before FtTJ Adio when he granted permission, Mr Bates conceded that in the circumstances the error of law was made out and was material. He accepted that there had been a procedural irregularity which had occurred which had led to unfairness and to the appellant being deprived of an opportunity to provide his bundle of documents relevant to the issues in this appeal.
15. Given the concession made it is only necessary to set out why that concession was properly made. As the grant of permission sets out through no fault of the FtTJ, the directions made at the case management review either were not sent to the appellant or did not find their way to him and as a result he did not know when or where to send his bundle of documents. This is supported by the emails sent to the Tribunal; firstly the email sent on 24 December 2021 which refers to having no further correspondence from the Tribunal since 16 June 2021 and a request to be updated as to the stage of the appeal and the next steps and

there is a follow-up email sent on the 19 February 2022. There is a screenshot of the email sent 19/2/22 and an acknowledgement of receipt. It is significant as the decision of the FtTJ was promulgated on 21 February 2022 and therefore after the appellant had sent the email.

16. Mr Bates stated the electronic file that he had access to did show that the respondent had complied with the direction by filing a bundle on 15 December 2021. However it did not appear that the bundle had reached the FtTJ as the judge referred to there being no bundle from either party. Mr Bates fairly submitted that that was supportive of the appellant's claim that there had been difficulties in evidence being put before the FtTJ.
17. In the circumstances I am satisfied that the procedural irregularity as identified above which amounts to a material error of law as it amounted to unfairness to the appellant who was precluded from providing documents in support of his appeal. As this is a paper appeal, the materiality of the error is plain.
18. Consequently the decision of the FtTJ is set aside. I have therefore considered the issue of remaking the decision. In reaching a decision as to the venue for the hearing, I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. Having considered the practice statement and the recent decision of the Court of Appeal in *AEB v SSHD*[2022] EWCA Civ 1512 and that of the Upper Tribunal in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 46, and in accordance with the grounds of appeal as provided by the appellant seeking a remittal to the First-tier Tribunal, and the submission made by Mr Bates for the appeal to be remitted, I am satisfied that the correct course is for the appeal to be remitted to the First-tier Tribunal. It is not appropriate for the appeal to be retained in Upper Tribunal where the issue is one of procedural irregularity and that where the unfairness to the appellant has prevented his right to have his appeal considered by the First-tier Tribunal. I am also satisfied that the appeal falls within both 7.2 (a) and (b) as the effect of the error deprived the appellant of an opportunity for that party's case to be considered by the FtT and also when considering paragraph 7.2(b) it will be necessary to undertake an assessment of all the factual evidence, oral and documentary, when reaching a decision.
19. The decision shall therefore be remitted to the FtT for a hearing on a date to be fixed. The appellant has recently provided a bundle of documents including updated evidence which was sent to the tribunal in 2 emails. It does not appear to have been served on the respondent. The appellant must ensure that the bundles are sent to the relevant First-tier Tribunal so that all the evidence is before the decision maker. The sponsor indicated that the appellant would wish for an oral hearing. The appellant will need to decide whether he wants his appeal to be decided with a hearing or not and inform the First-tier Tribunal. The appellant must carefully read any further information sent to him by the First-tier Tribunal and make sure that he uses the correct email address given and responds with any evidence or any reply within any deadlines that are set by the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside. The appeal shall be remitted to the First-tier Tribunal for a hearing.

**Upper Tribunal Judge Reeds**  
**Upper Tribunal Judge Reeds**

5/9/23