



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/06726/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke

**Decision & Reasons
Promulgated**

On 7 June 2017

On 8 June 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SHERAZ AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr D Akhtar, Kenneth Jones Solicitors

For the respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision dated 20 July 2016 the First-tier Tribunal dismissed the appellant's appeal against a decision dated 10 March 2015 refusing his application for entry clearance to join his spouse, Mrs Akhtar ('the sponsor'). This decision was based upon two reasons: (i) 'suitability' – the SSHD considered that the appellant had falsely placed reliance upon the sponsor's employment, in relation to which it was alleged the HMRC said there were

no tax records for the relevant year; (ii) 'eligibility' - the evidence regarding the sponsor's employment did not meet the 'specified evidence' requirements.

2. The First-tier Tribunal dismissed the appeal, and upheld the SSHD's decision on both 'suitability' and 'eligibility' grounds.
3. The appellant's current solicitors lodged wide-ranging grounds against this decision. This included the submission that the hearing before the First-tier Tribunal was tainted by procedural unfairness. It was explained in the grounds that the appellant and the sponsor had been defrauded into paying a person claiming to be able to provide legal representation at the hearing, and that on the day of the hearing that person persuaded the sponsor to hand over more money and proceed with the hearing without any legal representation.
4. Although permission to appeal was at first granted on limited grounds, in a decision dated 5 January 2017 Upper Tribunal Judge Perkins granted permission on all grounds.
5. Both parties have complied with directions that I gave on 11 January 2017. The appellant relied upon a detailed witness statement provided by the sponsor, explaining the events leading to being left without representation before the First-tier Tribunal. This witness statement is supported by corroborating evidence from a variety of sources. A complaint has been made to the police and I understand that investigations are continuing. At the beginning of the hearing before me, Ms Abone accepted that she did not wish to cross-examine the sponsor on the contents of her witness statement and the events described were not in dispute.
6. Although Ms Aboni argued in a letter dated 26 January 2017 that there was no procedural unfairness, at the hearing before me she accepted that there was. I read the first lines from the record of proceedings taken by the First-tier Tribunal. This demonstrates that the First-tier Tribunal did not clarify the lack of representation at any point. Previous solicitors had written a letter confirming they were no longer instructed on 13 July 2016, some two days before the First-tier Tribunal hearing. This does not mean that the First-tier Tribunal was at fault in any way. It just lends support to the sponsor's claim that she did not know what to do and was not presented by the First-tier Tribunal Judge with a clear opportunity to explain

what had recently happened.

7. Ms Aboni accepted that the sponsor had been duped by a person claiming to be a legal representative. He falsely told her that he had arranged for a barrister, the barrister was in the court room, but in any event the Judge should not be told about this. There was no barrister in the court room. Understandably, given the timing and circumstances of the events the sponsor was bewildered and confused and did not explain matters to the Judge. The appellant then proceeded to answer questions from the Judge at a time when she was very confused indeed. In my judgment, there has been a procedural irregularity and this has caused the appellant procedural unfairness, such that the First-tier Tribunal decision must be set aside.
8. Had the sponsor been assisted by a legal representative, the First-tier Tribunal may well have been taken to cogent evidence from HMRC confirming the income she claimed to have received. Indeed, Ms Abone submitted a witness statement from HMRC dated 26 January 2017, which she said made it clear that the HMRC now accepted that the sponsor declared the income claimed for the relevant years at the relevant time, and as such there was no deception. If I am wrong about the hearing being tainted by procedural unfairness, in the alternative the First-tier Tribunal has made a mistake of fact regarding the HMRC evidence that has caused the appellant unfairness.
9. Both representatives agreed that the decision should be remade by the First-tier Tribunal. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.
10. Given the HMRC witness statement, Ms Abone formally withdrew the allegations in the decision relevant to 'suitability' and deception. She confirmed that the SSHD now only relied upon the 'eligibility' concerns set out in the decision letter relevant to the failure to provide the requisite specified evidence.

Decision

11. The decision of the First-tier Tribunal involved procedural

unfairness constituting an error of law. Its decision cannot stand and is set aside.

12. The appeal shall be remade by the First-tier Tribunal de novo.

Directions

- (1) The appeal shall be reheard de novo by the First-tier Tribunal sitting at Stoke (TE: 1.5 hrs) on the first date available. There has been delay in relisting the matter before the Upper Tribunal and given the circumstances of this case it would be helpful if a hearing could be listed as soon as possible.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
7 June 2017