



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

Appeal Number: IA/41274/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 18th June 2014

Promulgated

On 23 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

MUHAMAD AFZAL AFZAL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Majeed, Denning Solicitors

For the Respondent: Mr S Waitwell, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant is a citizen of Pakistan born on 8th December 1981. He appeals against the decision of First-tier Tribunal Judge Finch dismissing his appeal against the decision to refuse a residence card as confirmation of a right of residence under the Immigration (EEA) Regulations 2006.

2. Permission to appeal was granted on 14th April 2014 on the grounds that it was arguable that there had been procedural unfairness, as a letter from the Sponsor's employer sent to the Tribunal by the Appellant and received on 28th February 2014 was not placed before the Judge before she determined the appeal on 7th March 2013.
3. At the hearing, it was agreed by the parties that there had been a procedural irregularity and the decision should be remade. Rule 43 of The Tribunal Procedure (Upper Tribunal) Rules 2008 states that the Upper Tribunal may set aside a decision if it is in the interests of justice to do so and there has been some procedural irregularity in the proceedings. I find that there has been a procedural irregularity in the proceedings and in the interests of justice I set aside the decision dated 7th March 2014.
4. Mr Waitwell submitted that the matter should be remitted to the First-tier Tribunal to hear further evidence and make findings on whether the Sponsor was a qualified person. The Sponsor had not attended the hearing before the First-tier Tribunal and her employment had since changed. There was no issue in relation to whether the Appellant's continuing presence was not conducive to the public good since the Respondent accepted that the Appellant did not have any previous convictions.
5. Mr Majeed agreed that the matter should be remitted for substantive hearing and, after taking instructions, requested that the matter be heard by the same Judge.
6. Given the Judge's findings at paragraph 13, I have decided in accordance with paragraph 7.2 of the Practice Statements of 25th September 2012 that the decision dated 7th March 2014 should be set aside and the appeal remitted to the First-tier Tribunal.

DIRECTIONS

- (i) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before First-tier Tribunal Judge Finch.
- (ii) The parties to serve all further documentary material on which they intend to rely not later than 7 days before the date of hearing.

Deputy Upper Tribunal Judge Frances
18th June 2014