



IAC-PE-SW-V1

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

Appeal Number: IA/19869/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 3rd September 2015**

**Decision & Reasons Promulgated
On 16th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR ALFREDO ESCOBAR DAVID
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tetley of Counsel

For the Respondent: Miss Johnstone

DECISION AND REASONS

Introduction

1. The Appellant born on 7th September 1966 is a citizen of Cuba. The Appellant was represented by Mr Tetley of Counsel. The Respondent was represented by Miss Johnstone a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for indefinite leave to remain in the United Kingdom as the spouse of a person present and settled, on 9th November 2013. The Respondent had refused that application on 7th April 2014. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Cox sitting at Stoke on 6th August 2014. The judge had dismissed the Appellant's appeal. Application for permission to appeal had been made and permission had been granted by First-tier Tribunal Judge Scott-Baker on 20th March 2015. Permission was granted on the basis that the judge should not have permitted the Appellant's wife to act as a representative thereby depriving her of the ability to give evidence and that the Appellant had incorrectly applied for indefinite leave to remain but the judge failed to deal with the application under the correct Rules. Directions were issued for the Upper Tribunal to decide firstly whether or not an error of law had been made in this case.

Notice of Decision

3. It was properly agreed between both Miss Johnstone and Mr Tetley that an error of law had been made by the judge in this case and that I should set aside that decision and by agreement the case should be remitted back to the Home Office to consider the Appellant's application properly as an application for limited leave to remain.
4. Given that was the agreed position between the parties and seemed a sensible approach that is a matter with which I agree.
5. Accordingly I find that a material error of law was made by the judge in this case, set aside the decision of the First-tier Tribunal and by agreement the matter is remitted back to the Home Office to make a decision based upon the Appellant's now, application for limited leave to remain.
6. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever