



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/03297/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2016**

**Decision & Reasons
Promulgated
On 4 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

**MR. SURAJIT MUKHERJEE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A. Fijiwala, Home Office Presenting Officer
For the Respondent: Mr. E. Fripp, Counsel instructed by Daniel Cohen
Immigration Law Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Majid promulgated on 25 August 2015 which allowed Mr. Mukherjee's appeal against the Secretary of State's refusal to issue him with a permanent residence card as confirmation of his right to reside in the United Kingdom under the Immigration (EEA) Regulations 2006 (the "Regulations").

2. For the purposes of this decision, I refer to Mr. Mukherjee as the Appellant and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as it was at least arguable that the reasoning was wholly inadequate.
4. At the hearing Mr. Fripp accepted that for the reasons given in the grounds of appeal the decision was not sustainable.
5. Ms Fijiwala submitted that the appeal should be remitted to the First-tier Tribunal for rehearing. She referred to paragraph 7.2 of the Practice Statements.
6. I announced that I found the decision involved the making of a material error of law as it was inadequately reasoned, and I remitted it to the First-tier Tribunal for rehearing. My reasons are set out below.

Error of law

7. The judge does not set out the decision against which the Appellant is appealing. While he states that he has read the refusal letter carefully, and has taken into account the “justifications advanced for the negative decision”, it is not clear from the decision what those justifications are, and therefore how the Appellant has addressed them.
8. At paragraph [8] he states that he has outlined the “evidential elements of the evidence”. However when referring to the Appellant’s oral evidence, he does nothing more than state that it is in line with the Appellant’s witness statement [4]. He does not set out what the statement says, or what parts of the oral evidence were in line with the contents of the statement. He cites the case of Gondolia [1991] Imm AR 519 to justify the fact that he has not detailed each and every piece of evidence (paragraphs [6] and [9]), but he fails to set out those pieces of evidence which are relevant. At no point does he set out how this evidence addressed the concerns of the Respondent to show that the Appellant met the requirements of the Regulations.
9. Further, in his “reasons and deliberations”, he does not refer to any specific parts of the evidence before him. It is therefore not possible to tell from the decision how he was able to conclude that the Appellant met the requirements of the Regulations. I find that the failure to give clear reasons for his decision, as accepted by the Appellant’s representative, amounts to a material error of law.
10. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal

to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

11. At the hearing before me, Ms Fijiwala provided the Tribunal and the Appellant with further evidence for the purposes of the rehearing.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and I set the decision aside in its entirety.

The appeal is remitted to the First-tier Tribunal for rehearing.

I do not make an anonymity direction.

Signed

Date 28 February 2016

Deputy Upper Tribunal Judge Chamberlain