



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

Appeal Number: IA/07469/2015

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 2 February 2016**

**Decision & Reasons Promulgated  
On 10 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**SURINDER SINGH**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr A Caskie, Advocate, instructed by Livingstone Brown,  
Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India born on 15 August 1977. He appeals against a decision by First-tier Tribunal Judge Morrison promulgated on 3 June 2015. The case falls to be remitted to the First-tier Tribunal on an unusual basis.
2. The appellant's decision letter dated 10 February 2015 treats the case, as requested by the appellant's solicitors, as a reconsideration under the ECHR of his claim to remain as an unmarried partner. His representatives

pursued the case in the First-tier Tribunal as one not falling within the Immigration Rules. His grounds of appeal to the Upper Tribunal are on the same basis. Only at the stage of the hearing in the Upper Tribunal did Mr Caskie seek to withdraw any concession to that effect. Mrs O'Brien agreed that the case had been incorrectly approached on both sides. The respondent's decision-maker and the Presenting Officer in the First-tier Tribunal (among others) failed to appreciate that the case did qualify for consideration under the Rules, and in particular under paragraph EX1.

3. For the record, Mr Caskie drew attention to *Sison* IJR [2016] UKUT 00033 as authority for the proposition that the situation of the two adult children of the appellant's partner, if not amounting to family life, is relevant on the basis of joint private life. He also stated that there are at least two Upper Tribunal cases to the effect that where a partner makes it plain that he or she simply will not leave the UK, that is a sufficient basis on which to allow an appeal. On those limited submissions, and as those points do not now fall for decision, I express no opinion.
4. The decision of the First-tier Tribunal errs in law (through little fault of the judge) for the reasons sketched out above. It is **set aside**. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2, and as conceded, it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Morrison.
5. No anonymity order has been requested or made.



Upper Tribunal Judge Macleman

5 February 2016