



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/06195/2017**

THE IMMIGRATION ACTS

**Heard at Manchester
On 22 March 2018**

**Decision and Reasons
Promulgated
On 23 March 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OUSMAN MORONG
(anonymity direction not made)**

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION

1. The appellant has appealed against a decision made on the papers on 9 November 2017 in which the First-tier Tribunal dismissed his appeal against a decision dated 19 June 2017 that he did not have a right to reside under the Immigration (EEA) Regulations 2016.

2. The First-tier Tribunal considered evidence, inter alia, confirming that the appellant was employed between 5 December 2017 to 20 May 2017. The latter date was two days before the appellant was convicted and sentenced to 26 weeks imprisonment.
3. The First-tier Tribunal was not satisfied that the appellant was exercising Treaty rights in the UK but Mr McVeety accepted this was based upon a material mistake of fact. The First-tier Tribunal believed the appellant to be a serving prisoner as at the date of its decision, due to be released in 2018. The appellant explained that he was released from prison on 18 August 2017 and began working with the same employer he had before he went to prison, as a warehouse operative / fork lift driver, and he continues to be employed in this manner. Mr McVeety accepted that the appellant's claims are entirely supported by his release date notification, licence and wage slips.
4. The appellant explained that he was confused about the process and provided all the updated evidence to confirm he was re-employed having been released from prison to the 'caseworker' dealing with his reporting conditions. Mr McVeety noted there was support for this in the case file.
5. It therefore follows that due to no fault of the First-tier Tribunal, documents relating to the proceedings were not sent to or received by the First-tier Tribunal at the appropriate time. In my judgment it is in the interests of justice to set aside the First-tier Tribunal decision pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The appellant entirely misunderstood the process and was unrepresented. He had documentation directly relevant to the issues to be determined and thought that he had provided them to the right body but they were not sent to or received by the First-tier Tribunal. The First-tier Tribunal proceeded under a mistake of fact that played a material role in the decision and this caused unfairness. In addition, the condition at rule 43(2)(b) is met.

Decision

6. I set aside the decision of the First-tier Tribunal and direct that the matter is remitted to the First-tier Tribunal in order for it to re-make the decision in light of all the up to date information.

Directions

- (1) The hearing shall be relisted before the First-tier Tribunal. The appellant has requested an oral hearing before the First-tier Tribunal and given an undertaking that he will pay the relevant fee upon request.

- (2) The appellant shall file and serve updated evidence of his employment to the First-tier Tribunal and the SSHD within 28 days.
- (3) Within 14 days of receipt of this information, the SSHD shall file and serve an updated position statement.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
22 March 2018