



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23966/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 August 2018

Decision & Reasons Promulgated
On 31 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

Mr SHAHZAD INAYAT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, Counsel (instructed by Connaughts)
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted by First-tier Tribunal Judge J Grant-Hutchison on 26 July 2018 against the determination of First-tier Tribunal Judge Freer who had dismissed the appeal of the Appellant seeking leave to remain as a Tier 1 (Entrepreneur). (The appeal to the First-tier Tribunal was under the Immigration Rules as it

fell within the transitional provisions.) The decision and reasons was promulgated on 3 April 2018.

2. The Appellant is a national of Pakistan, born on 10 July 1976. His Tier 1 (Entrepreneur) appeal had previously been allowed by First-tier Tribunal C Bennett notwithstanding various adverse findings of fact to the limited extent of directing a reconsideration by the Secretary of State for the Home Department. That reconsideration had resulted in a further refusal decision dated 5 October 2016 which was the subject of the appeal before Judge Freer. The appeal had been heard on the papers by Judge Freer at the Appellant's request, an adjournment application having been refused.
3. Unfortunately, as the evidence on the First-tier Tribunal's file and as produced at the Upper Tribunal hearing further demonstrated, the appeal was determined by the judge in the absence of the Appellant's bundle of evidence. The notice issued by the First-tier Tribunal stated that all evidence was to be provided by 19 March 2018, whereas the decision and reasons states on its face that it was prepared on 13 March 2018, and that key documents such as business plan had not been provided. The Appellant's bundle which was served on the First-tier Tribunal and the Home Office on the due date of 19 March 2018 in fact contained a business plan, as well as other various other potentially relevant documents which of course the judge had not seen (no doubt inadvertently) when he dismissed the appeal.
4. Permission to appeal was granted *inter alia* on procedural fairness grounds.
5. At the hearing Mr Avery for the Respondent informed the tribunal that the Respondent agreed that the decision and reasons had to be set aside on the grounds of procedural error and consequent unfairness. Ms Gherman for the Appellant confirmed that it had been agreed that the decision and reasons should be set aside, and that the appeal should be reheard in the First-tier Tribunal by another judge. (Neither party was in a position to proceed to a rehearing in the Upper Tribunal immediately.)
6. The tribunal accordingly finds that there was the material error of law identified by First-tier Tribunal Judge Grant-Hutchinson, i.e., procedural unfairness. The onwards appeal is allowed. The original decision and reasons is set aside, to be remade in the First-tier Tribunal.

DECISION

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

The appeal is to be reheard in the First-tier Tribunal by any First-tier Tribunal Judge apart from Judge Freer.

Signed

Dated 23 August 2018

Deputy Upper Tribunal Judge Manuell