



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

Appeal Number: EA/04599/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 December 2018**

**Decision & Reasons Promulgated  
On 16 January 2019**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**ALIEU SAMBOU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Haywood, Counsel

For the Respondent: Mr T Wilding, Home Office Presenting Officer

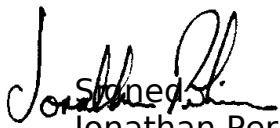
**DECISION AND REASONS**

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the Secretary of State refusing to issue an EEA residence card. The grounds of appeal settled by Mr David Linnear of Counsel conclude at paragraph 15 with the words "The respondent's decision to refuse the appellant's EEA residence card application is flawed".
2. It is.

3. Before me, Mr Wilding accepted immediately that the First-tier Tribunal's analysis of the evidence, for all the reasons criticised under ground 2 of Counsel's grounds, is just unsatisfactory and nothing can be salvaged.
4. It follows therefore that there has been no proper analysis of the evidence and the decision must be set aside, and it is appropriate to return it to the First-tier Tribunal where the case will have to be heard again.
5. There remains a dispute between the parties about where the correct burden of proof lies in cases such as this. That may have to be resolved in this Tribunal one day, but for present purposes nothing I say today is intended to illuminate that issue which will take the course it takes when the First-tier Tribunal looks at it again.

**Notice of Decision**

Nevertheless, by consent the parties agree the decision is unsatisfactory, that the proper remedy is to set aside the decision in order for the case to be reheard to the First-tier Tribunal. I allow the appeal to that extent.



Jonathan Perkins

Judge of the Upper Tribunal

Dated 8 January 2019