



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08529/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6 September 2019

Decision & Reasons Promulgated
On 16 September 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

FITIM POTERA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jones

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

DECISION AND REASONS

1. The appellant is a citizen of Kosovo who was born on 3 May 1984. The respondent refused the appellant leave to enter the United Kingdom as the spouse of a person present and settled here and the appellant appealed to the First-tier Tribunal which, in a decision promulgated on 21 May 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Mr Tarlow, who appeared for the respondent before the Upper Tribunal, did not formally concede the appeal but acknowledged that the grounds appeared to be

'valid.' He made no submissions in support of the judge's decision. Having heard the brief but helpful submissions of Ms Jones, who appeared for the appellant, I informed the parties that I intended to allow the appeal and return the appeal to the First-tier Tribunal for the matter to be determined *de novo*. I gave my reasons at court so will now be brief in summarising those reasons in this decision.

3. Before the First-tier Tribunal, the presenting officer representing the Entry Clearance Officer sought to place in evidence a minute relating to an interview of the appellant by the Entry Clearance Officer on 28 October 2017. This item evidence had not been produced in accordance with directions and had never previously been seen by the appellant. Counsel for the appellant objected to it being admitted and, in the alternative, sought an adjournment of the hearing so that the instructions of the appellant might be taken. That application was refused by the judge. The appellant now asserts that the hearing was unfair, the appellant having had no opportunity to give instructions on this relevant item of evidence. The judge observed that parts of the minutes were referred to in the notice of refusal. However, as Ms Jones pointed out, that fact did not in any way excuse the failure of the judge to provide a proper opportunity for the appellant (who alone of those giving evidence on his behalf in the appeal was able to give evidence regarding what had been said at the interview) to provide proper instructions to his representatives. By failing either to exclude the evidence or to adjourn the hearing, the judge fell into serious legal error. She deprived the appellant of a fair hearing of the appeal.
4. The appeal is allowed. The appeal is returned to the First-tier Tribunal (not Judge Chana) for that tribunal to remake the decision at or following a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal shall be returned to the First-tier Tribunal (not Judge Chana) for that Tribunal to remake the decision at or following a hearing.

Signed

Date 6 September 2019

Upper Tribunal Judge Lane