



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00381/2019
(V)**

THE IMMIGRATION ACTS

**Heard at George House, Decision & Reasons Promulgated
Edinburgh On 9th November 2020
by *Skype for Business*
On 4th November 2020**

Before

UT JUDGE MACLEMAN

Between

BARTOSZ WALCZAK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr G Rea, of Rea Law, Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge David C Clapham SSC dismissed the appellant's appeal by a decision promulgated on 6 March 2020.
2. The appellant appeals to the UT on the grounds attached to his application dated 26 March 2020.

3. I conducted the hearing from George House. Representatives attended remotely. No members of the public attended, either in person or remotely. The technology enabled an effective hearing.
4. Mr Whitwell conceded that the decision of the FtT disclosed error of law, as follows. The judge did not make it clear what was meant by the “higher” and “lower” tests relevant to the case. While the informed reader might be expected to know what those expressions meant, by reference to the Immigration (EEA) Regulations 2016, there was error in not articulating and applying the correct test to the facts. There was inadequate consideration by direct reference to the terms of the regulations, in particular on proportionality. It was not conceded that all the grounds should be upheld, particularly the point that the judge should have recused himself, but that became irrelevant.
5. I indicated that I would not have been likely to find that the circumstances were such that the judge should have recused himself, unprompted, for knowing a solicitor previously involved in the case, a matter which he very properly disclosed at the hearing. Mr Rea did not wish to make anything of that matter.
6. The following outcome is as agreed by the parties.
7. The decision of the FtT is set aside, and stands only as a record of what was said at the hearing.
8. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for a fresh hearing, not before Judge Clapham.
9. No anonymity direction has been requested or made.



4 November 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the

Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.