



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/04502/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34

**Decision & Reasons Promulgated
On 5 August 2020**

Before

UT JUDGE MACLEMAN

Between

ARISH MEHRAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. FtT Judge Lever dismissed the appellant's appeal by a decision promulgated on 12 November 2019.
2. The appellant sought permission to appeal to the UT on grounds of (1) no consideration of the explanation for dependency and (2) failure to put matters to the witnesses for explanation.
3. On 7 April 202, FtT Judge Swaney granted permission to appeal to the UT, on the view that Judge Lever arguably erred by failing to treat the requirements of regulation 8 (2) (b) as alternative rather than as cumulative, on the authority of *Dauhoo* [2012] UKUT 79. (The point did not perhaps arise very clearly from the grounds, but that is now incidental.)

4. On 18 May 2020, the UT issued directions with a view to deciding without a hearing whether the FtT erred in law and, if so, whether its decision should be set aside. Parties were also given the opportunity to submit on whether there should be a hearing.
5. On 1 June 2020, the appellant filed submissions in response, pursuing the original grounds and the point raised in the grant of permission.
6. On 12 June 2020, the appellant filed “supporting documents”. He does not explain why these should be considered by the UT, and does not apply for their admission, as required by the rules and by directions. They appear to have nothing to do with error of law by the FtT on the case before it.
7. The appellant has made no submission on whether there should be a hearing. He asks for the appeal “to be allowed”, but does not say what further procedure might be appropriate.
8. Records having been checked up to 28 July 2020, no response to directions has been received from the SSHD.
9. It is now appropriate, in terms of rules 2 and 34, to decide without a hearing on error of law and on setting aside.
10. Taking the grounds and the grant of permission together, the FtT failed to consider whether the requirements of the regulation should be considered alternatively, and, if so, whether the evidence was sufficient to qualify the appellant as an extended family member.
11. The error is material, so the decision of the FtT is set aside, and stands only as a record of what was said at the hearing.
12. The appellant seeks to improve his position by further evidence. Its admission and relevance are matters to be considered in the remaking of the decision.
13. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission. However, 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 an entirely fresh hearing.
14. The member(s) of the FtT chosen to consider the case are not to include Judge Lever.
15. No anonymity direction has been requested or made.
16. The date of this determination is to be taken as the date it is issued to parties.

Hugh Macleman

UT Judge Macleman
28 July 2020

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.