



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002695

First-tier Tribunal No: PA/53234/2021

**THE IMMIGRATION ACTS**

Decision & Reasons Issued  
1<sup>st</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**Anish Kumar Babla**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME OFFICE**

Respondent

**Decided on the papers with the consent of the parties**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S J Clarke dismissing his appeal against the decision dated 9 June 2021 and 29 December 2021 refusing his protection and human rights claim.
2. The judge found that the appellant did not have a well-founded fear of persecution in Afghanistan because he was an Indian national and could return with his family to India.
3. Permission was granted by Upper Tribunal Judge Hatton on the basis that it is arguable that there are numerous errors in the decision. These included that the judge reopened an uncontested issue in that both parties agreed that India does not permit dual nationality and the appellant has been issued with an Afghan passport, the judge failed to take into account the appellant's evidence that he was not an Indian national and further that the judge failed to follow legal authority that

children born outside India on or after 3 December 2004 are not Indian nationals unless their births are registered.

4. On 27 July 2023, by way of a response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the Rules”), the respondent indicated that the application for permission to appeal is not opposed. The Tribunal was invited to set aside the decision and remit the appeal for a fresh oral hearing.
5. On 2 August 2023 this Tribunal issued directions asking both parties whether they consented to this course of action and for the error of law application to be determined without a hearing and for the decision being made without written reasons.
6. The appellant confirmed in writing on 6 September 2023 that they were in agreement with the proposed course of action. There has been no response from the respondent.
7. I am satisfied from the documentation before me that both parties have given their consent for the appeal to be decided on the papers and for the decision to be set aside and remitted to the First-tier Tribunal for a de novo hearing with no findings preserved. I find that it is appropriate to remit this matter to the First-tier Tribunal because of the extent of the findings required. In these circumstances I am not required to give detailed reasons pursuant to rule 40(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

#### Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law.
2. The decision is set aside in its entirety with no findings preserved.
3. The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than First-tier Tribunal Judge Clarke\*.

*R J Owens*

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

3 October 2023  
(\*amended on 1 February 2024)