



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-
2023-004881
First-Tier No:
HU/52813/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 May 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

HUSSEIN MNAHY ALONAN
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Beech
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Royal Courts of Justice (Belfast) on 28 May 2024

DECISION AND REASONS

1. The appellant, a stateless Kuwaiti Bedoon, whose date of birth is 1 May 2005, appealed on human rights grounds against the respondent's decision dated 16 January 2023 refusing his application for entry clearance made on 15 August 2022. The First-tier Tribunal, in a decision promulgated on 18 October 2023, dismissed his appeal. The appellant now appeals to the Upper Tribunal.
2. The parties accept that, in the light of DNA tests, the appellant is the half sibling of the United Kingdom sponsor. The appeal before the First-tier Tribunal turned on the nature of the relationship between the appellant and the sponsor. The First-tier Tribunal judge found that Article 8 ECHR

was not engaged and, if it were engaged, that ‘the factors raised by the appellant are outweighed by the public interest because I am not satisfied, for the reasons set out above, as to the appellant's background relationship with the sponsor or his current circumstances in Iraq.’

3. Mr Diwnycz, for the Secretary of State, told me at the outset of his submissions that the Secretary of State agrees that the judge erred in law such that her decision falls to be set aside. He submitted that the judge had failed to have regard to *Singh v SSHD* [2015] EWCA Civ 630 para 24 in applying *Kugathas v. Secretary of State for the Home Department* [2003] EWCA Civ 31 and when considering whether the nature of the ties between the appellant (barely an adult by the time of the First-tier Tribunal hearing) and other family members for the purposes of Article 8 ECHR.

4. I am aware that these proceedings are adversarial and that, where both opposing parties agree, the Tribunal should generally acknowledge such an agreement in its decision. Where the parties may agree but they have both manifestly misapplied the relevant law (for example, where they identify the wrong legal test to be applied whilst the First-tier Tribunal has applied the correct test) it may be appropriate for the Upper Tribunal to uphold a decision of the First-tier Tribunal notwithstanding that the parties ask for it to be set aside. In the instant appeal, despite myself finding, on first reading of the papers, no reason to set aside the decision on account of any material legal error, I accept that the agreement between the parties does not concern an issue as clear cut as the application of a particular legal test. I accept that both parties agree that the judge erred in law and, in the circumstances, I set aside her decision accordingly. The decision shall be remade by the First-tier Tribunal 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 is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 28 May 2024