



**The Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal number: IA/38867/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 January 2015**

**Determination  
promulgated  
On 4 February 2015**

**Before**

**Upper Tribunal Judge Pinkerton**

**Between**

**MR MUHAMMAD NOMAN TARIQ**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

**For the Appellant:            Ms A Holmes  
For the Respondent: Mr R Sharma**

**REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW,  
SUCH THAT ITS DECISION FALLS TO BE SET ASIDE**

1. For ease the parties are referred to as they were before the First-tier Tribunal so that Mr Tariq is the appellant and the Secretary of State is the respondent.
2. The appellant applied for a permanent residence card on 30 April 2013. On 5 September 2013 the respondent refused to issue such a card. The appellant appealed and the matter came before Judge of the First-tier

Tribunal P J Clarke. In a determination promulgated on 15 May 2014 the judge dismissed the appeal under the EEA Regulations but allowed it on human rights grounds.

3. The respondent sought and was given permission to appeal that decision. Such permission was granted on the basis that it was arguable that the judge failed to consider all the requirements specified in paragraph 276ADE of the Immigration Rules when allowing the appeal.
4. The matter came before the Upper Tribunal on 21 July 2014 on an error of law hearing when, in the absence of the appellant, a material error of law was found in the First-tier Judge's determination and upon further consideration the appeal was dismissed on all grounds. Following an application for that decision to be set aside on the basis that the appellant had no notice of that hearing the Upper Tribunal Judge decided to set his decision aside under paragraph 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Having done that he directed that the appeal be heard afresh by another Judge of the Upper Tribunal. Hence the matter came before me.
5. In paragraph 23 of the determination the judge stated that he was satisfied that the appellant satisfies the requirements of paragraph 276ADE as the appellant is under 18 and has been continuously in the UK for seven years. Unfortunately that particular Rule at 276ADE(1)(iv) has the additional requirement set out in it that "it would not be reasonable to expect the appellant to leave the UK". This was added by HC 760 as from 13 December 2012. It seems likely that the judge was not aware of this change. If he was aware of it he has not referred anywhere in the decision to his finding in relation to that aspect.
6. I am not able to say that such an error is without importance. There needs to be an assessment as to whether it would or would not be reasonable to expect the appellant to leave the UK and the fact has to be found to establish whether the appellant complies with all the requirements of that particular Rule.
7. I therefore announced my decision at the hearing that the decision of the First-tier Tribunal Judge is to be set aside and the appeal reheard. After hearing submissions I was persuaded that there is missing documentation in both parties' files and the evidence needs to be brought up-to-date. The Tribunal was also pressed for time and so in all the circumstances this appeal is remitted to the First-tier Tribunal to be heard afresh.
8. I was not addressed in relation to the matter of anonymity. However, I note that the First-tier Tribunal Judge made an anonymity direction because the appellant was then a minor. He is now aged over 18 and I see no need for the anonymity direction to continue so that there is no longer any anonymity in relation to this appeal.

**Signed:**

## **Upper Tribunal Judge Pinkerton**