Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: EA/02945/2017**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 14th November 2018	**On 20th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

KHATERA ALKOZAI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Jafferji (Counsel)
For the Respondent: Miss H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Parkes, promulgated on 20th April 2018, following a hearing at Birmingham on 6th April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant sought to reapply for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and he was born on 7th June 1991. He appealed against the decision of the Respondent Secretary of State. The essence of the difficulty in this appeal arises from exactly which decision is in issue here.

This is because there were two decisions. First there was a decision headed "reasons for refusal letter" and this shows that its deemed date of delivery was 8th March 2016. Second, there was a decision headed "notice of immigration decision" and its deemed date of delivery was 8th March 2017. The reality, however, is that those decisions are dated 6th March 2017. If this is the case, then the former decision, that in which the deemed date is 8th March 2016, could not have been correct, in circumstances where the actual date of the decision was 6th March 2017.

3. The decision by Judge Parkes makes it clear that reference is made (at paragraph 1) to the fact that his Tribunal papers referred to "the notice of immigration decision and the refusal letter are dated 8th March 2017 …". This would appear to suggest that both decisions were before the judge at the time of the appeal hearing.

Submissions

4. In his submissions before me, Mr Jafferji stated that it was not clear whether both decisions were before the judge. This is because in rejecting the Appellant's appeal, the fundamental question to be resolved was whether the Appellant had actually been in this country lawfully resident, and whether he had contrived to circumvent the immigration provisions. The first decision, where the deemed date of service was 8th March 2016, made no reference whatsoever to these issues. The second decision, where the deemed date of service was 8th March 2017, did do so. More importantly, the Appellant had actually responded to the Secretary of State's questionnaire by giving answers to sixteen questions, which demonstrated the history of the couple and their time together, and this is expressly referred to in the "notice of immigration decision in the fourth and fifth paragraphs of that decision. It is not referred to at all in the "reasons for refusal letter". Similarly, the "notice of immigration decision" also goes on to recognise that, "having carefully considered the evidence provided, it is accepted that you resided with your British citizen Sponsor in the EEA host country". In the next paragraph, however, it goes on to then say that

> "Having considered all of the evidence and information provided in support of your application, and applying the civil standard of the balance of probabilities, it is accepted that you and your British citizen Sponsor residence in the EEA host country was genuine". (See page 2 of 6).

That is not recognised at all in the "reasons for refusal letter".

5. It is against this background, submitted Mr Jafferji, that the decision of the judge needs to be considered because what is stated at paragraph 22 was that

> "So far as the refusal letter is concerned the reference to it being accepted that the residence was genuine that was clearly a typing error. These can happen innocently and unhealthily and was demonstrated by the need for Mr Ahmed [appearing on behalf of the Appellant] to correct identical errors in the witness statements of the Appellant and the Sponsor. Given the overall contents of the refusal letter and associate documentation and the fact that the appeal was resisted there can be no real claim for confusion regarding what was meant and

nothing turns on the point. The Appellant cannot show any prejudice for the error or reliance on it.....".

6. Mr Jafferji submitted that this cannot be right because the application to treat the recognition of there being lawful residence as an error was an application made by the Home Office Presenting Officer before the judge, and it was accepted by the judge, without any evidence being provided for it. The fact that such an application was made, may well have arisen from there being in the court bundles a copy of the "reasons for refusal letter", because otherwise it would not have been made. This is because the "notice of immigration decision" expressly recognised that the Appellant had been in the EEA host country residing in a genuine manner, and that had also resided with his British citizen Sponsor in the EEA host country in a lawful manner.

7. Yet, the outstanding issue still to be made, namely, as to whether the Appellant had sought to circumvent the Immigration Rules, and nowhere in the immigration decision by Judge Parkes was this question considered, but it was the right question if one has regard to the "notice of immigration decision" (where the deemed date of service was 8th March 2017), and if it was not addressed by Judge Parkes, one explanation for this could be that he did in fact only have before him the "notice of immigration decision". Whatever is the position, Mr Jafferji submitted, that the confusion was one that could not be resolved except by returning this matter back to the First-tier Tribunal to be determined again afresh.

8. For her part, Miss Aboni submitted that she would have to agree with this. She certainly did have in her own documentation a reference to both the "notice of immigration decision" and to the "reasons for refusal letter", both of which were dated 6th March 2017 (but in respect of the latter it had curiously been stated that the deemed date of service was 8th March 2016, which could plainly not have been the case). She agreed that the matter needed to be remitted back to the First-tier Tribunal for there to be a proper consideration of these issues.

Error of Law

9. Given the agreement between the parties before me, I find that there is an error of law (see Section 12(1) of TCEA 2007) such that this decision should be set aside. The relevant letter is plainly the "notice of immigration decision" which was decided on 6th March 2017, with the deemed date of service 8th March 2017, and not the "reasons for refusal letter".

10. In this relevant letter, it is accepted that the Appellant did respond to the questionnaire and it is accepted that he had resided with his British citizen Sponsor in the EEA host country and the residence was a genuine one.

11. The decision to refuse has been considered in that context, together with the question as to whether there had been an attempt to circumvent the Immigration Rules.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Parkes pursuant to practice statement 7.2(b) of the Practice Directions.

13. No anonymity direction is made.

14. The appeal is allowed.

Signed Dated

Deputy Upper Tribunal Judge Juss 17th December 2018