



**The Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal number: IA/31735/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On February 17, 2016**

**Decision & Reasons Promulgated  
On February 23, 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**MR OLEG GLUSHCHENKO  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

Appellant Ms Norman, Counsel, instructed by Sterling and Law Associates LLP

Respondent Mr Tarlow (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The Appellant is a citizen of Ukraine. The appellant had previously been issued with a residence card issued on April 6, 2009 valid until April 6, 2014. On May 12, 2014 he applied for a residence card as confirmation of his right to reside here. The respondent refused the application on June 12, 2014.
2. The appellant appealed this decision on August 7, 2014, under Regulation 26 of the Immigration (European Economic Area) Regulations 2006.

3. The appeal came before Judge of the First-tier Tribunal Robinson as a paper case on June 19, 2015 and in a decision promulgated on July 9, 2015 he refused the application having regard to the EEA Regulations and article 8 ECHR.
4. The appellant sought a reconsideration and in the alternative lodged grounds of appeal on July 16, 2015 submitting the Judge had erred by failing to have regard to a bundle of documents submitted on June 1, 2015 by first class post.
5. Permission to appeal was initially refused by Judge of the First-tier Tribunal Hollingsworth on October 12, 2015 but Deputy Upper Tribunal Judge Mailer granted permission on the basis of an arguable procedural irregularity.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that Order.
7. The matter came before me on the above date. Ms Norman confirmed the letter dated June 1, 2015 and documents attached had been sent by first class post and had not been faxed. Mr Tarlow stated he had seen the letter and was prepared to accept it had been sent to the Tribunal in good time and that it appeared the letter had never been tied up to the file. In the circumstances he was prepared to concede an error in law.
8. He viewed the copy documents that were available and indicated that if these documents had been before the First-tier Judge then they may have led to a different outcome. Mr Tarlow was not prepared to concede this issue as the originals had not been seen and invited me to find an error in law and remit the matter back to the First-tier Tribunal. Ms Norman agreed with this approach.
9. The Judge could not be faulted for his approach but the respondent accepted there was an issue of fairness that had to be considered in this case and based on that principle I agreed there was an error in law.
10. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

“Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

- 11. Mr Tarlow invited me to remit the matter back to the First-tier Tribunal and in light of the Practice Direction I agreed the matter should be remitted.
- 12. There is already a bundle on the Court file in addition to the bundle that was sent on June 1, 2015. The appellant should also ensure that there is a witness statement from his employer addressing any concerns raised by the respondent and that witness should assist the Court by attending the hearing to give oral evidence unless the respondent does not require that person's attendance. The appellant should also attend and be available for any questions bearing in mind the content of the refusal letter.

### **DECISION**

- 13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
- 14. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis