



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

Appeal Number: EA/04899/2017

THE IMMIGRATION ACTS

**Heard at Manchester IAC
On 8 March 2018**

**Decision & Reasons Promulgated:
On 9 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**ALEKSANDRAS MIKALAUSKAS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Representation:

For the Appellant: Not represented and not in attendance.

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Aziz. The Judge had allowed Mr Mikalauskas's appeal against the decision of the Secretary of State informing of his liability to detention and removal pursuant to the Immigration (EEA) Regulations 2016.
2. The Secretary of State's grounds are put in clear terms, namely that the Judge had allowed the appeal based on Regulation 26(3) of the 2016 Regulations, but the Secretary of State's decision and the appeal emanating from it was in respect of Regulations

23(6)(a) and 32(2). Regulation 26(3) is connected to “misuse of rights” whereas the correct Regulations referred to someone who does not have a right to reside in the United Kingdom or who has ceased to have a right to reside in the United Kingdom.

3. The Appellant had not attended today in readiness for the hearing at 10am. Indeed, I note that he did not attend the hearing at the First-tier Tribunal. I also noted from the Tribunal file that the Appellant had been served with the notice of hearing. When I got to the end of my list and there was still no attendance by or on behalf of the Appellant, I decided to proceed with the hearing. Mr McVeety was content to rely on the grounds of appeal.
4. It is clear to me that there is a material error of law in the Judge’s decision. The Judge’s task was made more difficult with the manuscript and difficult-to-read original grounds of appeal to the Tribunal (against the Respondent’s rejection of his application), but ultimately, the Judge decided the case on the incorrect Regulations and thereby came to the wrong findings and conclusions.
5. In the circumstances, there is no alternative but to find that there is a material error of law in the Judge’s decision. Mr McVeety said that if I was to find a material error of law then the appropriate course would be for the Appellant to be given an opportunity to present his arguments, if any, in respect of the correct Regulations and that therefore that would necessitate the matter having to be remitted for a re-hearing at the First-tier Tribunal. In my judgment, that is the appropriate and fair course. The re-hearing shall be on all issues. None of the current findings shall stand.

DECISION

The Decision of the First-tier Tribunal contains a material error of law and is set aside.

There shall be a re-hearing at the First-tier Tribunal.

No anonymity direction is made.

Signed: Abid Mahmood

Date: 8 March 2018

Deputy Upper Tribunal Judge Mahmood