



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

Appeal Number: IA/23400/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22 October 2013

Determination

Promulgated

On 27 November 2013

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Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

SHIMATAVER ANTHONY WAYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Cantor, Counsel, instructed by A & A Solicitors LLP

For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Andonian sitting at Taylor House on 13 August 2013 in which he dismissed the appellant's appeal against the decision of the Secretary of State to give directions for the removal of the appellant from the United Kingdom

pursuant to the rejection of the appellant's claim in respect of the Immigration Rules and Article 8 of the ECHR.

2. The challenge advanced is one of procedural fairness. The judge noted that two potential witnesses, namely the mother and grandmother of the asserted partner of the appellant, had provided witness statements but did not attend the hearing. What the judge, I am satisfied, did not record is that there had been a specific application made by Counsel to the judge at the hearing for an adjournment on the basis that both of the witnesses were unwell. The partner's mother, having undergone cancer treatment had a hospital appointment and the grandmother was said to be unwell for other reasons. Nowhere in the determination does the judge record the adjournment application or his response to it. It is therefore not possible to ascertain on what basis, if any, the judge decided to proceed notwithstanding the application.
3. Lest it be thought that the matter is immaterial, I agree with Ms Cantor's submissions to me that there is, plainly, evidence as disclosed in the appellant's bundle comprising the witness statement of the grandmother and a letter from the mother which arguably go to the issue of whether it would be proportionate in the circumstances to require the appellant to leave the United Kingdom and make an entry clearance application to return here from abroad.
4. The judge has also erred, I find, in failing to have any regard to those documents in reaching his conclusions on the appeal. For those reasons I find that there are material errors in the determination of the judge. I set his decision aside.
5. In all the circumstances, and having heard submissions to this effect from the parties, I consider that it is appropriate for this case to be remitted to the First-tier Tribunal to be reheard in its entirety by a judge other than Judge Andonian. My reasons for so saying are that this is a case which comes within the purview of the relevant Practice Statement. The effect of the error has been in effect to deprive the appellant of a fair hearing. He therefore ought to have that hearing at the appropriate level, which is the First-tier Tribunal.
6. Arrangements have been made this morning for documentation in possession of Ms Cantor relating to the respective illnesses of the witnesses to be supplied to Ms Kiss who represents the Secretary of State.

Signed
Date

Upper Tribunal Judge Peter Lane