



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: OA/04844/2015**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2016**

**Decision & Reasons
Promulgated
On 12 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

**MS MALIKA HUSSAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed of Law Lane Chambers
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellant, a citizen of Pakistan, appealed against a notice of liability to removal from the UK. Her appeal was decided, at her election, on the papers by Judge V Jones sitting at Birmingham on 16 July 2015. In a decision of 22nd, promulgated on 23rd, July 2015 he allowed the appeal under the Immigration Rules.
2. Permission to appeal was granted to the Respondent by Judge Kekić on 12 November 2015 in the following terms:

“The Respondent challenges the determination of First-tier Tribunal Judge V Jones who allowed this out of country appeal against the respondent’s decision to remove the appellant from the UK following her alleged use of deception in obtaining an English language certificate. The appeal was determined on the papers.

Reliance is placed by the respondent on the grounds of appeal submitted with the application for permission to appeal to the First-tier Tribunal. Those grounds argue that the judge was wrong to state that a bundle had not been submitted by the respondent for the appeal as the record shows it was forwarded to the Tribunal on 15 July 2015 and that it should therefore have been placed before the judge. It is also maintained that the generic evidence with regard to language certificates from ETS is well known to judges and the judge could have adjourned the appeal in order to obtain a bundle.

Whilst I am less persuaded by the second ground, I am of the view that the first shows a procedural impropriety amounting to an arguable error of law and on that basis permission to appeal is granted.”

3. The error of law hearing before me took the form of submissions, which I have taken into account.

Determination

4. The complaint of the Respondent is that a Respondent’s bundle dated 14 July 2015 and date stamped as having been received on 16 July 2015 at Birmingham, was not before the judge when he considered the appeal on 16 July nor when he finalised his determination on 22 July 2015. Indeed, this bundle had not reached the file by the time of the error of law hearing, and Mr Whitwell gave me a copy, which shows the date stamp.
5. Judge Jones summarised the position in relation to the evidence of the Respondent thus:

“7. No documents were filed on behalf of the respondent. Prior to this hearing the tribunal wrote to the parties making directions for them to lodge all documents they wished to rely on in support of their case. The first of these (dated 13 March 2015) directed the respondent to lodge all documents by 10 April; the second (dated 28 April) extended that date to 26 May and the third (dated 1 June) gave a further extension until 27th June. The respondent has not complied with the directions or otherwise responded to the notices. The notices explained clearly to the respondent that the appeal would be determined without the documents if they were not received by 27 June at the latest. I have therefore decided to proceed with the appeal in their absence. In considering the matter I have taken account of the Secretary of State’s response, dated 24 December 2014, to a

pre-action protocol letter written by the appellant's solicitors on 15 December 2014 which was included in the appellant's bundle."

6. Checking the file, these dates are correct, except that the two references to 27 June should, I believe, have been to 29 June. Nothing turns on this.
7. As is the normal procedure, none of the notices to the parties indicated the date upon which the appeal would be considered. With appeals considered on the papers, this is inevitable, because nobody can say on what date there will be judicial capacity to hear them. Neither party knew that the appeal would be considered on 16 July. It was by chance that the Respondent's bundle arrived on that date.
8. The issue is whether the fact that the Respondent's bundle did not reach the file, so that the judge determined the appeal without sight of it, represented a procedural irregularity. Because of the chronology, I conclude that it did not. The appeal might well have been determined at an earlier date. The Respondent was in breach of three successive directions. There was no procedural irregularity simply by virtue of the Respondent's bundle having been received on the same date as the appeal was considered.
9. This is the only basis of application. I accordingly dismiss the application and uphold the decision.

Decision

10. There was no procedural irregularity, and thus no error of law in the original decision, which is upheld.
11. No anonymity direction is made.

Signed
February 2016

Dated: 9

Deputy Upper Tribunal Judge J M Lewis