



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

Appeal Number: IA/06327/2015

THE IMMIGRATION ACTS

Heard at Bradford UT

**Decision & Reasons
Promulgated**

On 13th November 2017

On 30 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MS KIM DINH LE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Johnrose, Solicitor, Fusco Browne Immigration

For the Respondent: Mrs Pettersen, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a citizen of Vietnam (born 8th April 1989) appeals with permission against the decision of a First-tier Tribunal (Judge Gillespie) dismissing her appeal against the Respondent's decision of 4th February 2015 refusing to vary her leave to remain in the United Kingdom and giving directions for her removal. The Appellant has a protracted immigration history which is set out below.

Background

2. The Appellant arrived in the UK on 27th June 2014 in possession of a visit visa valid until 29th November 2014.
3. On 27th November 2014 she applied for variation of that leave on the basis that she had given birth to a child in the UK. The child's date of birth is registered as 22nd November 2014. Because of the recent birth of her child, she requested an extension of time in order to make arrangements to leave the UK and return to Vietnam.
4. Suffice to say the Appellant did not leave the UK and on 4th February 2015 the Respondent served a decision refusing her application for leave to remain. The Appellant appealed this decision and the Grounds of Appeal, which were in standard form, said that it would be contrary to the Appellant's human rights and those of her child for the Appellant to be removed. Articles 2, 3 and 8 were quoted, although there has never been any substantive evidence put forward concerning Articles 2 and 3.
5. The appeal hearing came before Judge Pedro at Hatton Cross on 12th February 2016. The Appellant did not attend the hearing and the Judge, having satisfied himself that the Appellant had been properly served with a notice of hearing, dealt with the appeal in the Appellant's absence. He dismissed the appeal.
6. Permission to appeal Judge Pedro's decision was granted by consent, on the basis that it was accepted that due to an administrative difficulty neither the Appellant nor her representatives were properly served with a notice of hearing. Judge Pedro's decision was therefore set aside with the matter being remitted to the First-tier Tribunal for a fresh hearing.
7. The fresh hearing was set down for 31st March 2017 at Hatton Cross. The Appellant did not attend at the renewed hearing but her representative did. Application was made by her representative to adjourn the proceedings. This was on the basis that the Appellant's child had been taken to hospital in the early hours of the morning of the date of the hearing. Medical evidence was produced although it was noted that the child was discharged at 1.20am that morning.
8. The FtTJ, having received this evidence, decided to hear the appeal in the Appellant's absence. A full decision outlining his reasons for not acceding to the adjournment request was given. The appeal was dealt with on its merits and dismissed.
9. The Appellant appealed this decision on the basis that she wished to give evidence on her own behalf and she had not had an opportunity to do so. In addition, she claimed she wished to trace her child's father who is a British citizen.

10. Permission to appeal Judge Gillespie's decision was refused initially in the First-tier Tribunal but granted on a renewed application to the Upper Tribunal. The relevant part of the grant of permission reads as follows:

"The grounds argue that the Judge was wrong not to adjourn the hearing when the Appellant did not attend because she had to attend hospital in the early hours of that day with her child. Whilst the Judge's concerns over the failure to prepare the case and give instructions to the representatives are entirely understandable, it is arguable that the appellant could not be (sic) expected to attend given the circumstances and so was not given the opportunity to give evidence. Even though her claim may not be strong, that was arguably unfair."

11. Thus the matter comes before me to decide whether the decision of the First-tier Tribunal contained such error of law that it must be set aside and remade.

Error of Law Hearing

12. Ms Johnrose appeared on behalf of the Appellant and Mrs Pettersen on behalf of the Respondent. The Appellant attended the hearing together with her husband. Statements in support of the Appellant's case were served both from the Appellant and from her husband. Those statements outline that the Appellant is no longer in a relationship with the man whom she was seeking to trace as being the British father of her child. Events have now moved on in her life and she has now reconciled with her husband. He is a Vietnamese national currently working in the UK, lawfully. He works as a junior doctor. It turns out from DNA evidence, which was also submitted, that the Appellant's child was in fact fathered by her husband and not by the man with whom she had entered into a relationship.
13. Nevertheless the issue before me is whether First-tier Tribunal Judge Gillespie erred in proceeding with the hearing in the absence of the Appellant.
14. Ms Johnrose took instructions on this point. I was told that the Appellant's child had attended hospital in the early hours of the morning of the date of the hearing. The child had suffered a minor head injury and been sick. The advice from the hospital was that the child should be kept at home and should not travel. The Appellant was living in the Sheffield area and the appeal hearing was set down at Hatton Cross. It had been the Appellant's intention to bring her child with her to the hearing because there was no-one else to look after the child. Ms Johnrose said that in these circumstances it is understandable that the Appellant had a reasonable excuse for not attending the hearing.
15. I find it is clear from the judge's decision to proceed that much of this information was not put before him. I am satisfied however that had this

fuller explanation been put before him the adjournment would have been granted. In these circumstances therefore I am satisfied that the decision of the First-tier Tribunal discloses an error of law and that the appropriate course is for the decision to be set aside and for the matter to be remitted to the First-tier Tribunal for a fresh hearing.

16. Mrs Pettersen did not seek to persuade me otherwise. She helpfully indicated that as events had moved on and the Appellant's husband is now in the UK with lawful authority, she would make enquiries in the interim period to ascertain precisely what status the Appellant's husband has. This may well have a bearing on any future hearing.

Notice of Decision

17. The decision of the First-tier Tribunal is set aside for error. The appeal shall be remitted to the First-tier Tribunal for that Tribunal to remake the decision (not Judge Gillespie or Judge Pedro).
18. No anonymity direction is made.

Signed
2017

C E Roberts

Date

29 November

Deputy Upper Tribunal Judge Roberts