



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

Appeal Number IA/00605/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th April 2018**

**Decision and Reasons Promulgated
On 16th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**ALICIA PROMESSE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of St Lucia. Her immigration history is set out in paragraphs 4 to 10 of the decision of First-tier Tribunal Judge O'Garro and I do not need to repeat it here. The Appellant's application in this case was for a derivative right of residence as the primary carer of a French national child. The Appellant's appeal was first heard by First-tier Tribunal Judge Manyarara who allowed the appeal in a decision promulgated on the 8th of July 2015.
2. The decision of Judge Manyarara was set aside by Deputy Upper Tribunal Judge Lewis and remitted to the First-tier Tribunal for re-hearing following a hearing in the Upper Tribunal on the 4th of January 2016. The remitted appeal was heard by Judge Eban at Hatton Cross on the 29th of April 2016 and dismissed in a decision promulgated on the 16th of May 2016. That too was challenged and set aside by Deputy Upper Tribunal Judge Saini following a hearing before him on the 15th of December 2016. Again the appeal was remitted to the First-tier Tribunal for re-hearing.

3. The appeal was then listed before Judge O'Garro at Hatton Cross on the 19th of July 2017. On that day the Secretary of State was represented but the Appellant did not attend. The Judge noted that the Notice of Hearing had been sent to the Appellant at the address the First-tier Tribunal held on file on the 28th of January 2017 and being satisfied that the Appellant had been duly notified of the hearing date proceeded to hear the case. The appeal was dismissed for the reasons given in her decision promulgated on the 30th of August 2017.
4. The Appellant applied for permission to appeal to the Upper Tribunal in grounds of application to the First-tier Tribunal of the 10th of September 2017. In summary the Appellant stated that she had received the Upper Tribunal's decision and had been informed that she would receive a notice of hearing in due course but the next thing to arrive was the decision of Judge O'Garro itself. It was argued that this was an administrative error which gave rise to a breach of article 6 of the ECHR.
5. The application was considered by First-tier Tribunal Judge Grant-Hutchinson who granted permission to appeal to the UK in a decision of the 22nd of February 2016. She found that "as the Appellant had not received notification of the appeal hearing date, any documentary evidence which may have been lodged by the Appellant and the Appellant's oral evidence, and that of any witnesses which may have heard...may have a material difference to the outcome or to the fairness of the proceedings."
6. From the rule 24 response of the Secretary of State it was accepted that if the Appellant had not received the notice of hearing that could have been a material issue. However it was not accepted on her mere assertion that the notice was not received.
7. The Appellant attended before the Upper Tribunal with her 2 children. She maintained that although she had received the decisions and the notification of the Upper Tribunal hearings she had not received the notice of the hearing for the 19th of July 2017 at Hatton Cross and the first she heard about it was when she received the decision. She had not realised that she could have contacted the First-tier Tribunal to chase up a hearing date.
8. The Home Office expressed some concern about the explanation given that this is the second time that this has happened. Given the number of times that this case has been round the system I was not happy about the prospect of setting aside the decision of Judge O'Garro but given that the Appellant does not appear to have had the opportunity to attend the hearing and given her willingness to attend other hearings including those in the Upper Tribunal it appears that the Appellant's aim is to engage with the process.
9. At the hearing I told the Appellant that a date for the next hearing would be fixed today and that she was not to leave the building until she had been given the date of the next First-tier Tribunal at Hatton Cross. I also advised the Appellant that she should contact Hatton Cross to confirm the hearing was going ahead a few days before the listed hearing. In the event that Hatton Cross had to cancel the date given at the Upper Tribunal then she ought not to wait but should contact Hatton Cross to confirm any new date.
10. After the decision had been reserved I was informed by the clerk that the Appellant had provided a new address. This was given as [Maidstone]. The date for the hearing at Hatton Cross has been confirmed as the 22nd of November 2018. The Appellant was informed of the new date at the hearing before she left Field House and that was confirmed by the court clerk.

11. Although this case already has a lengthy and unfortunate history the circumstances are such that I have to find that there was an administrative error in which circumstances the Appellant was not informed of the hearing and that there was a procedural error affecting the fundamental fairness of the hearing. This is not a fault on the part of the Judge who on the information that she had acted appropriately.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal at Hatton Cross for re-hearing on all issues.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

I make no fee award which remains for the First-tier Tribunal at the conclusion of the appeal.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 11th April 2018