



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/14327/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Determined at Field House without
a hearing
On 14 November 2019**

**Decision & Reasons Promulgated
On 14 November 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**MEGHABEN JAYENDRA PANCHAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. On 7 October 2019, I granted permission to appeal in this case in these terms, with the following directions:
 1. It is arguable that the hearing before the First-tier Tribunal was infected by procedural unfairness in that the appellant's representatives had sent her bundle to the Tribunal, and requested a hearing on the papers, on 24 June 2019 by Recorded Delivery. The application for permission to appeal includes a copy of the "Signed for" delivery note, demonstrating that the correspondence (including the bundle) was received by Taylor House on 25 June 2019. The hearing was on 1 July 2019. The judge recorded at [6] that he was without any evidence from the appellant and, accordingly, dismissed the appeal. In fact, as confirmed by the Tribunal's file, the papers were stamped as received on 25 June 2019, and have now been linked to the file.
 2. Although no fault of the judge, it was arguably procedurally unfair for the tribunal to proceed under the circumstances. The decision may have been different had the judge had the bundle.

3. It is not clear why permission to appeal was refused by the First-tier Tribunal. The file reveals that the papers were received in advance of the hearing. The set-aside provisions in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 may have been a more appropriate avenue for redress, at least in the first instance.

DIRECTIONS

It is my preliminary view that the decision did involve the making of an error of law capable of affecting the outcome, and that the decision of the First-tier Tribunal should be set aside, the appropriate course of action being to remit the case to the First-tier Tribunal for a fresh determination on all issues.

Unless within ten working days of the issue of these directions there is any written objection to this course of action, supported by cogent argument, the Upper Tribunal will proceed to determine the appeal without an oral hearing and will remit it to the First-tier Tribunal.

In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed.

Permission to appeal

2. There has been no response to these directions by either party. Accordingly, I am satisfied that neither party objects to the matter being determined without a hearing and has nothing further to say. I am satisfied that that the determination of the First-tier Tribunal did involve the making of an error of law for the reasons set out above, and must therefore be set aside. In the circumstances, owing to a procedural unfairness, the appellant did not receive a fair hearing, and the appropriate course is to remit the appeal to the First-tier Tribunal for a fresh decision on all issues

Notice of Decision

1. The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues.

No anonymity direction is made.

Signed *Stephen H Smith*
2019

Date 14 November

Upper Tribunal Judge Stephen Smith