



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

Appeal Number: HU/16888/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16<sup>th</sup> January 2019**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MISS ANIFA AZIZ  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Tampuri, legal representative, instructed by  
Chancery CS Solicitors

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Ghana who applied for entry clearance to come to the United Kingdom and whose application was refused and whose subsequent appeal to Judge Herlihy dismissed in a decision promulgated on 21<sup>st</sup> August 2018.
2. The judge noted that there were no Grounds of Appeal before him and on that basis decided that there was no basis to conclude that the Respondent's decision was not made in accordance with the Rules or that

it breached the Appellant's human rights. The judge held that the appeal must therefore fail.

3. Permission to appeal was applied for and initially refused but granted by an Upper Tribunal Judge in a decision (undated) but which pointed out that there may have been a procedural irregularity in the proceedings.
4. Thus, the appeal came before me on the above date. Before me Mr Tampuri stated that the Sponsor's witness statement and the Grounds of Appeal had been lodged with the court and should have been before the judge and therefore there had been procedural unfairness in the judge not considering the documents.
5. Helpfully Ms Jones acknowledged that the documents had been before the court and therefore, although for some reason not before the judge, were within the court system and as such the decision was not safe.
6. The parties agreed that the sensible way forward was to set the decision aside because of the material error in law and to remit the appeal to the First-tier Tribunal in order that the Appellant could have a fair hearing.
7. Because the Appellant has not had a fair hearing (because the judge did not consider the documents were lodged with the Tribunal) fact-finding is necessary and the matter will have to be heard again by the First-tier Tribunal.
8. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand.
9. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

### **Notice of Decision**

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
11. I set aside the decision.
12. I remit the appeal to the First-tier Tribunal.
13. No anonymity order is made.

Signed *JG Macdonald*

Dated 5<sup>th</sup> February 2019

Deputy Upper Tribunal Judge J G Macdonald

