



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

Appeal Number: PA/09062/2017

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**On 14 December 2018**

**Decision given orally at hearing**

**Decision & Reasons**

**Promulgated**

**On 11 January 2019**

**Before**

**THE HON. MR JUSTICE LANE, PRESIDENT  
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**SF  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: McGlashan MacKay

For the Respondent: Mrs O'Brien

**DECISION AND REASONS**

1. This is an appeal brought by the appellant against the decision of the First-tier Tribunal, which on 8 May 2018 following a hearing in Glasgow on 25 January that year, dismissed the appellant's protection appeal.
2. This determination was substantially delayed in appearing. That in itself is not a reason to challenge its validity. We know now from case law of the Court of Appeal in England and Wales and the Upper Tribunal itself that

what matters in a case involving a delay in the production of a decision is whether there is anything in that delay that may have infected and so called into question the findings of fact of the Tribunal.

3. In this case, the matter is simple to decide. At paragraph 21 of the decision, the judge said “The Appellant’s wife did not appear to give evidence on behalf of the Appellant”. The decision discusses a written statement of the appellant’s wife, together with the evidence of the appellant, both oral and written.
4. Regrettably, what the judge said in paragraph 21 is wrong. If we look at the Record of Proceedings, we see that the wife was called, adopted her statement, and was then extensively cross-examined. That is relevant because, as the grounds point out, the wife is said to have provided corroboration of many of the matters that concerned the judge and which led to the dismissal of the appellant’s appeal.
5. Had this point been noted, then the First-tier Tribunal, upon receiving the application for permission to appeal, should pursuant to rule 35 of the First-tier Tribunal Rules and section 9 of the Tribunals, Courts and Enforcement Act 2007, have undertaken a review, which would have resulted in this appeal decision being set aside by the First-tier Tribunal itself and re-made in that Tribunal.
6. Unfortunately, permission was granted, which means that there has been delay in this case coming before the Upper Tribunal and there will then be further delay in remitting it to the First-tier Tribunal. That is inevitable now, since the nature of the fact-finding exercise that has to be undertaken is extensive. Indeed, it seems to the Upper Tribunal that the appellant has not had a fair hearing from the First-tier Tribunal.
7. The decision of the First-tier Tribunal is, accordingly, set aside for error of law and the decision will be re-made by the First-tier Tribunal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 31/12/18

The Hon. Mr Justice Lane  
President of the Upper Tribunal  
Immigration and Asylum Chamber