



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

PA/11250/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 11 July 2019

Decision & Reasons Promulgated
On 18 July 2019

Before

UT JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R R

Respondent

For the Appellant: Mr Diwyncz, Senior Home Office Presenting Officer
For the Respondent: Mr Chaudry, of Latta & Co, Solicitors

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD appeals against the decision of FtT Judge Farrelly, promulgated on 25 March 2019, on the grounds set out in the application filed with the FtT on 8 April 2019.
3. The grounds are misleading in suggesting that in the FtT there was "little in the way of any fresh evidence and no cross examination of the appellant". The responsibility does not lie personally with Mr Diwyncz,

who had access to the case file only late on the day before the hearing in the UT, and who very properly advised that evidence had been taken from witnesses, including the appellant, who was cross-examined, and that the relevant notes kept by his colleague in the FtT ran to 20 pages. This corresponds with the records kept by the appellant's representative and by the judge.

4. Mr Diwyncz said that in accordance with the SSHD's usual working procedures, the grounds would have been prepared with sight of the decision, but not with sight of the full file or record of proceedings.
5. Inadvertence may excuse the official who drew the grounds, but not the respondent. There is no reason for systems not to be in place, within relevant time constraints, to ensure that authors of grounds are fully informed of the case which was before the FtT.
6. The grounds overstate the significance which the FtT should have attached to a previous decision in the case of the appellant's brother. They understate the extent of other evidence before the FtT. They misrepresent the FtT's approach to the previous decision. It was not given "no weight", as the grounds assert at paragraph 3. It was correctly described at paragraph 11, under reference to case law, as "a starting point to be departed from dependent on the evidence".
7. The appellant's rule 24 response to the grant of permission is well taken.
8. The grounds, on excision of their errors, do not rise above insistence that the FtT should have taken the failure of the appeal of the appellant's brother as determinative, which it was not.
9. The grounds fail to show that the decision of the FtT should be set aside for error on any point of law.
10. The appeal to the UT is dismissed. The decision of the First-tier Tribunal stands.
11. The FtT made an anonymity direction, which is preserved herein.



11 July 2019
UT Judge Macleman