



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

Appeal Number: HU/00928/2017

**THE IMMIGRATION ACTS**

**On the papers on 3 July 2020**

**Decision & Reasons Promulgated  
On 20 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**LETICIA TIEKUBEA  
(Anonymity direction not made)**

Appellant

**and**

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

Respondent

**ERROR OF LAW FINDING AND REASONS**

1. On 4 October 2019 First-tier Tribunal Judge M A Khan ('the Judge') dismissed the appellant's appeal on human rights grounds.
2. Permission to appeal has been granted by Upper Tribunal Judge Martin sitting as a judge of the First-tier Tribunal on 28 January 2020 on the basis it is arguable that Judge Khan ought to have adjourned the hearing and that the Judge's comments on the oral evidence are not reasoned.
3. In light of the Covid: 19 pandemic directions were sent to the parties indicating the Upper Tribunal's preliminary view that the question of whether the Judge had made an error of law material to the decision to dismiss the appeal could be made on the papers and providing an opportunity for each to make representations.

4. The appellant's representative filed submissions dated 14 May 2020 objecting to the matter being determined on the papers arguing the benefits of an oral hearing in litigation but that, in any event, the Judge's decision is vitiated by errors of law for the reasons set out in the grounds of appeal.
5. A response from a Senior Home Office Presenting Officer, Mr Jarvis, in the form of a Rule 24 reply has been received dated 29 May 2020, which states at [4]

4. However, having considered the A's grounds about the absence of Mr Boateng and the Ftj's reasons for refusing the adjournment request, [8 - 10] the SSHD accepts the Judge:

- a. Did not properly consider the context of the request, namely that Mr Boateng was due to attend but work plans had changed;
- b. Held against the A's request the length of time the appeal had been in the Tribunal system, which was not the fault of the A;
- c. Failed to make any actual findings about what weight should be given to his statement.

6. Mr Jarvis accepts in principle that the evidence of Mr Boateng could have made a difference to the assessment of the claim of the genuineness of the relationship, without conceding that the appellant or the witnesses are reliable.
7. A further communication received by email from the appellant's representatives dated 4 June 2020 records that in light of the respondent's concession that the Judge erred in law, unless the Tribunal considers that not to be made out, the permission application can be dealt with on the papers.
8. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
9. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
10. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

34.—

- (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
- (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

- (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.(4)Paragraph (3) does not affect the power of the Upper Tribunal to—
- (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
  - (b) consent to withdrawal, pursuant to rule 17;
  - (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
  - (d) make a consent order disposing of proceedings, pursuant to rule 39,without a hearing.
11. It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to be determined on the papers. This approach is agreed by the advocates representing the parties and nothing on the facts or in law makes consideration of the issues on the papers not in accordance with overriding objectives at this stage.

### **Error of law**

12. The Judge considered the adjournment request at [8 - 10] of the decision under challenge. The Judge noted that the sole issue in the case was whether the appellant was in a genuine and subsisting relationship with her husband and that Mr Boateng, a crucial witness to support the appellant’s claim, had been unable to attend despite having previously taken a day off work to give evidence, as a result of work-related issue.
13. It is not disputed that when considering a request to adjourn the primary principle is that of the fairness of the decision and whether in light of the decision a party will be denied a fair hearing. The assertion by the Judge that there had been plenty of opportunity for the witnesses to attend is an arguably irrational comment when there was evidence that Mr Boateng had made arrangements to attend but was unexpectedly unable to do so as a result of circumstances beyond his control. Similarly the fact the appeal had been in the system since 2017 could not be laid at the door of the appellant as this had occurred as a result of the Upper Tribunal setting aside a previous decision due to a material error of law having been established.
14. The Judge is also criticised for failing to make proper findings in relation to the appellant and her husband’s evidence without providing any or adequate explanation, particularly in respect of why the evidence was found to be vague and/or evasive and that the Judge adopted an erroneous approach to assessing whether the appellant and her husband’s relationship is genuine for the reasons set out in the grounds seeking permission to appeal.
15. I accept having reviewed the evidence, the decision, grounds of challenge and parties submissions that the Judge has erred in law in a manner material to the decision to dismiss the appeal for the reasons set out in the grounds and summarised by Mr Jarvis at [4] of the Rule 24 reply.

16. I find the Judge refusing to adjourn the appeal without giving proper reasons, considering the fairness of the decision, and coming to his conclusion on irrational findings, has committed a procedural irregularity sufficient to amount to an arguable error of law. It is material as it prevented the appellant from being able to call a key witness whose evidence may make a material difference to the outcome of the appeal.
17. In terms of the future management of the appeal, Mr Jarvis submits that bearing in mind the time this process has already taken and the First-tier Tribunal's failure to lawfully decide the appeal on two occasions, the matter should be retained by the Upper Tribunal.
18. The appellant's representative's position is that as the evidence will need to be heard afresh the First-tier Tribunal is amply qualified to hear that evidence.
19. Whilst it is unfortunate that this matter will have to be heard again, afresh, that does not mean the First-tier Tribunal which is a specialist fact-finding Tribunal is unable to properly undertake this task. In this appeal live evidence will have to be heard from all witnesses and extensive findings of fact made as a result of the fact there can be no preserved findings from Judge Khans determination as a result of the procedural irregularity and other identified issues.
20. Having considered the Presidential Guidance I consider it appropriate in all the circumstances for the appeal to be remitted to the First-tier Tribunal to be heard *de novo* by a judge other than Judge M A Khan who shall be nominated by the Resident Judge of that Hearing Centre.

## **Decision**

21. **First-tier Tribunal Judge M A Khan materially erred in law. I set aside his decision. The appeal shall be remitted to the First-tier Tribunal sitting at Hatton Cross to be heard afresh by a judge nominated by the Resident Judge of that Centre other than Judge M A Khan.**

Anonymity.

22. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 3 July 2020

