



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14381/2019 - V

THE IMMIGRATION ACTS

Heard at Field House
By Skype
On 17 June 2020

Decision & Reasons Promulgated

On 26 June 2020

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

MOHAMMED FIYAZ IQBAL (V)
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Aziz, Maidstone Solicitors
For the Respondent: Mrs H Aboni, Senior Presenting Officer

DECISION AND REASONS

(Decision given orally at the hearing of 17 June 2020)

Introduction

1. This is an appeal against the decision of Designated Judge McClure, promulgated on 9 January 2020, dismissing an appeal against a decision of the Secretary of State refusing the appellant's human rights claim - such decision being taken on 23 August 2019. The decision to refuse the human rights claim incorporated within it, a

“deportation decision”, a deportation order having previously been signed by the Secretary of State of 19 August 2019.

Permission to Appeal

2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge O’Brien in a decision of 3 February 2020, the relevant parts of that decision reading as follows:
 - “(3) The decision makes no reference to having heard live evidence from Ms [A]. Furthermore, the judge’s own notes do not appear to contain any record of live evidence from Ms [A]. Notes attached to the application purport to be the appellant’s representative’s own notes of live evidence given by Ms [A] at the hearing. Ms [A]’s evidence will clearly have been material.
 - (4) Providing that the appellant’s representative will be able to confirm the provenance of the notes attached to the application, it is arguable that the judge failed to consider material evidence and so erred in law.”
3. To put the grant of permission into its proper context, it is asserted that Ms [A] and her son (who has recently turned 18 years old) have a family life with the appellant - Ms [A] claiming to be the appellant’s fiancée.

Decision and Reasons

4. Despite the indication in the grant of permission that the appellant’s representative would be required to confirm the provenance of the hearing notes attached thereto, (which purported to support the assertion that Ms [A] had given oral evidence), the Tribunal has still not been provided with a witness statement from the author of the notes.
5. Nevertheless, at the outset of the hearing Mrs Aboni confirmed that having read the minutes of the hearing produced by the Presenting Officer who appeared before the First-tier Tribunal, she is content that Ms [A] did indeed provide oral evidence to that Tribunal. In such circumstances, she accepted that the First-tier Tribunal had erred in failing to (i) identify that such oral evidence had been given and (ii) take account of such evidence. Mrs Aboni further conceded that the failure to take account of Ms [A]’s oral evidence amounted to a material error of law that should lead to the First-tier Tribunal’s decision being set aside.
6. Given the aforementioned concession, I provide only brief reasons as to why I set aside the First-tier Tribunal’s decision.
7. First, it is not in dispute between the parties that Ms [A] gave oral evidence to the First-tier Tribunal. Second, I observe that despite the First-tier Tribunal identifying, in paragraph 36 of its decision, the names of those witnesses who provided oral evidence before it, Ms [A]’s name is not therein identified. Third, it is not obvious from reading the First-tier Tribunal’s decision as a whole that the Tribunal had regard to Ms [A]’s oral evidence. Furthermore, having read the First-tier Tribunal’s

record of proceedings I cannot readily identify any passages therein which record the oral evidence provided by Ms [A].

8. Whilst I have some concerns over the materiality of the failure of the First-tier Tribunal to take account of Ms [A]'s oral evidence, Ms Aboni, on behalf of the SSHD, did not share such concerns. In such circumstances, where both parties agree on the issue of the materiality of the First-tier Tribunal's error, I conclude that the appropriate course is to set aside the decision of the First-tier Tribunal.
9. As to the forum for the remaking of the decision on the appeal, once again both parties were in concurrence that the appropriate forum should be the First-tier Tribunal. I agree that this is so because the error identified is, in my view, of a type that falls within this scope of Practice Direction 7.2(a) of the Practice Statements of the Immigration & Asylum Chambers of the First-tier Tribunal and Upper Tribunal, i.e. the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing.

Decision

10. The decision of the First-tier Tribunal is set aside, and the appeal is remitted to the First-tier Tribunal to be determined *de novo* by a judge other than Designated Judge McClure.

Signed

Mark O'Connor

Upper Tribunal Judge O'Connor

24th June 2020