



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

Appeal Number: HU/19442/2019

**THE IMMIGRATION ACTS**

**Decided without a hearing  
On 17 November 2021**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> November 2021**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**JACQUES SWARTZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**DECISION AND REASONS, PURSUANT TO RULES 34 AND 40 OF THE  
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

**Background**

- 1.** This is an appeal against the decision of First-tier Tribunal Judge G A Black (“the judge”), promulgated on 12 August 2021. By that decision, the judge dismissed the appellant’s appeal against the respondent’s decision, dated 23 October 2019, refusing his human rights claim made by way of an application for entry clearance. In summary, the appellant wished to come to the United Kingdom to be with his minor two children (both children are from a previous marriage).
- 2.** The respondent’s decision was based solely on the appellant’s apparent inability to satisfy the financial requirements under the relevant Immigration Rules.

3. The judge's decision was made without a hearing. She concluded that the evidence of the appellant's funds (as she perceived it to be) to show that he met the Immigration Rules or that he would not be a burden on public funds kingdom. Given that the appellant could not satisfy the Immigration Rules, the judge went on to conclude that there was no evidence to show why the appeal should succeed on a wider Article 8 ECHR grounds.
4. The appellant, who has been unrepresented throughout, drafted grounds of appeal to the effect that the judge had failed to have regard to all of the financial evidence which had been sent in prior to her decision being made. The grounds state that the evidence showed he did in fact have enough money. In addition, he asserts that he had a strong relationship with both of his children and that he also had a British citizen partner living in this country.
5. Permission to appeal was granted by the First-tier Tribunal. The file came before me and I initially issued a directions notice confirming that the next hearing would be conducted on a remote basis.
6. However, later in the day I was made aware that the respondent had provided a rule 24 response. This stated that the respondent did not oppose the appellant's appeal. That the decision of the First-tier Tribunal should be set aside and the case reconsidered by the Upper Tribunal following what is called a resumed hearing in due course.

### **Procedural issue: the method of deciding this appeal**

7. In light of the respondent's rule 24 response, I have carefully considered what the fairest and most efficient course of action is.
8. I have concluded that I can fairly make a decision on whether the First-tier Tribunal erred in law without holding a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The appellant says that the judge misunderstood or overlooked the evidence before her. The respondent has, in effect, agreed with this. In these circumstances, I see no need for a hearing.

### **Decision on error of law**

9. Given the respondent's concession in the rule 24 response, I conclude that the judge erred in law, principally for the reasons set out in the grounds of appeal. The respondent accepts that the error of law is material to the outcome, and I agree.
10. I therefore set aside the judge's decision.

## **Disposal**

- 11.** The respondent has said that this case can be looked at again by the Upper Tribunal. Having considered all the circumstances of the case, I have concluded that the appropriate course of action is to remit this appeal to the First-tier Tribunal for a rehearing with no preserved findings of fact. This is because the financial issue needs to be looked at again, as does the question of family life: both will require careful fact-finding.
- 12.** It is likely that the remitted hearing will require evidence to be taken, very probably both written and oral.
- 13.** A recent decision of the Upper Tribunal, Agbabiaka (evidence from abroad: Nare guidance) [2021] UKUT 00286 (IAC) (the link to this decision is: [tribunalsdecisions.service.gov.uk](https://tribunalsdecisions.service.gov.uk)), says that evidence from an individual (including an appellant) cannot be taken from overseas unless and until the other country in question (here, South Africa) gives permission for that to take place.
- 14.** The appellant must therefore contact the First-tier Tribunal as soon as possible and confirm that he will wish to give oral evidence from South Africa at the next hearing. This is very important: the next hearing will not be able to take place with the appellant giving oral evidence until the South African authorities have confirmed that they have no objection to this occurring.
- 15.** If the appellant wishes his current partner in the United Kingdom to give oral evidence, he must inform the First-tier Tribunal of this as well.
- 16.** The effect of my decision is to rescind (cancel) the directions notice sent out to the parties today.

## **Anonymity**

- 17.** The First-tier Tribunal made no anonymity direction and nor do I.

## **Notice of Decision**

- 18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**
- 19. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.**
- 20. I remit the case to the First-tier Tribunal.**

**21. I rescind the directions notice sent out to the parties on 17 November 2021.**

**Directions to the First-tier Tribunal**

1. This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete rehearing, with no preserved findings of fact;
2. The remitted hearing shall not be conducted by First-tier Tribunal Judge G A Black;
3. The First-tier Tribunal will issue any further case management directions deemed appropriate, bearing in mind that the appellant is not legally represented and will probably wish to give oral evidence from abroad.

Signed: H Norton-Taylor

Date: 17 November 2021

Upper Tribunal Judge Norton-Taylor