



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006357
First-tier Tribunal No:
EA/13786/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

PELLUM REXHEPAJ
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr T Hussain, instructed by Milestone Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 20 April 2023

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Hussain ("the judge") who, on the 13th of July 2022, dismissed the appellant's appeal against the Secretary of State's decision to refuse him a family permit. The judge recorded it as an EEA family permit application; in fact, it was an application under the EU Settlement Scheme.
2. The grounds for permission to appeal refer to paragraphs 8 to 12 of the judge's decision and contended that the Tribunal acted unfairly in the circumstances and the proper approach should have been to adjourn the hearing. The grounds asserted that the appellant was clearly legally represented and there was an obvious issue with contacting the legal representatives. Counsel was not contacted by phone on the number supplied to the Tribunal and the representative was informed that as the case was on a float list when the case was ready to be called on, the Tribunal would make contact by phone to inform the parties when to log onto the CVP platform. There was, apparently, a breakdown in communication between the Tribunal and the legal representatives

because counsel only became aware that the case was effective after a phone call from solicitors informing him that a link had been sent by e-mail. No phone contact was made.

3. At the hearing before me, Mr Hussain confirmed that he was advised that telephone contact would be made by the Tribunal to the legal representative prior to commencement of the case, in particular, because it was on a float list.
4. Mr. Walker conceded that there was indeed a procedural error in the conduct of the hearing and that the matter should be remitted to the First-tier Tribunal for a hearing de novo.

Conclusion

5. As the grant for permission to appeal makes plain the appellant, and momentarily the sponsor, attended the hearing via CVP. The representative did not attend the hearing at all although the tribunal was aware that the appellant was legally represented and that the hearing was to take place via CVP.
6. Counsel for the appellant appeared by CVP only after the judge had reserved his decision and informed the judge that he had not been contacted by the tribunal by telephone to advise him to join the CVP platform. The e-mail from the tribunal had landed in his junk e-mail and thus counsel stated that he did not receive notification of the CVP link. The judge does not appear to have made or caused to be made any inquiries of the representatives on record to ascertain why they were not present online.
7. No apparent attempt was made to contact the appellants counsel by telephone to ascertain why he had not appeared. The judge's decision makes no reference to the possibility of adjourning the hearing for the issues above to be addressed nor in the light of the apparent IT difficulties being experienced by the appellant sponsor in maintaining the connexion to the CVP platform. In his decision, the judge merely recorded that the appellant had no representation.
8. I find that the appellant was deprived of the presence of his legal representative, albeit that the judge was aware that a legal representative was poised to attend via CVP on the day. Further confusion may have occurred owing to the hearing being in a 'float list'. The appellant through no fault of his own was deprived therefore of a fair hearing owing to a procedural error on the part of the judge which was material and renders the decision unsafe owing to a material error of law. The effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal.

Notice of Decision

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the error which was procedural the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (a) of the Presidential Practice Statement.

Signed 20th April 2023

Helen Rimington
Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

DIRECTIONS

- 1. In view of the previous difficulties with IT for this appellant the matter should be set down for a hearing FACE to FACE.**
2. An Albanian interpreter should be present.

Signed 20th April 2023

Helen Rimington
Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber