



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006025
FtT No: HU/52909/2022
IA/04600/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MOHAMED RILUWAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Khan, Counsel, instructed by Direct Access
For the Respondent: Mr D Clarke, Senior Presenting Officer

Heard at Field House on 30 June 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Joshi ('the Judge'), sent to the parties on 7 November 2022, dismissing his human rights (article 8 ECHR) appeal.

Brief Facts

2. The appellant is a national of the Maldives and is presently aged 22. He entered the United Kingdom on 22 March 2021 as a visitor, enjoying leave to enter until 6 September 2021. He was subsequently granted Coronavirus assurance valid until 19 November 2021.
3. On 4 November 2021 he applied for leave to remain as the spouse of a British citizen, having married on 20 October 2021. The respondent refused the application by a decision dated 25 April 2022.

Discussion

4. Mr Clarke quite properly conceded that the decision of the Judge was subject to material error of law and requested that the matter be remitted to the First-tier Tribunal to be considered afresh. Unsurprisingly, Mr. Khan agreed. I am satisfied that Mr Clarke acted properly by making his concession.
5. It is appropriate that I make certain observations as to matters arising in this appeal.
6. The Judge recorded in his decision:
 - '14. No one attended the hearing on behalf of the Appellant. The Tribunal clerk confirmed that the Appellant was informed of the hearing and no contact had been made either from the Appellant, his representative, or the Sponsor.
 15. Ms Bibi submitted that she had no other information as to why the Appellant had not attended the hearing and submitted that the appeal could proceed. I decided it was in the interests of justice to do so.
 16. Ms Bibi made oral submissions which are contained in full in the recorded record of proceedings and which I considered in their entirety.'
7. On 14 November 2022, thirteen days before the listed hearing, Mr Khan, Counsel for the appellant, uploaded a 'section 84 form' to the First-tier Tribunal's core case data platform ('CCD'), confirming that he would be representing the appellant at the listed hearing. A handwritten note at the top of the form confirmed that the hearing was to be conducted by Cloud Video Platform ('CVP'). In writing this note, Mr Khan was referencing a decision of Judge of the First-tier Tribunal Chohan, dated 14 October 2022, to convert the listed face-to-face hearing into a CVP remote hearing. I observe Judge Chohan's reasoning:
 - 'The medical evidence in the form of a GP letter dated 12 October 2022, in which the appellant's wife's pregnancy is confirmed and that

she suffers from severe morning sickness and travel sickness. In the circumstances, I grant the application and the appeal hearing shall be converted to a CVP hearing.'

8. Judge Chohan's decision was made the day after the matter had been placed on the face-to-face float list by a notice dated 13 October 2022.
9. Both Judge Chohan's decision and the section 84 form are accessible on CCD.
10. On the morning of the hearing, in accordance with Judge Chohan's direction, the appellant, his wife and Mr. Khan were on standby awaiting communication from the First-tier Tribunal to join the hearing. They waited from before 10.00 to 16.00 without receiving any update from the First-tier Tribunal, and erroneously assumed at 16.00 that due to a lack of hearing time the case had not been called on. They therefore awaited a new notice of hearing.
11. It appears to this Tribunal that the first significant error is that the listing of this appeal by the First-tier Tribunal in Birmingham did not abide by the order of Judge Chohan, and therefore did not properly note that the float had been converted into a CVP remote hearing.
12. A second, significant error was the failure by the Judge to request that his clerk contact the appellant's legal representative to ascertain the true situation. It appears that it was passively, and erroneously, considered sufficient that the representatives had not contacted the administration office. However, being mindful of the overriding objective it would have been proper for enquiries to be initiated by the Judge to ensure that the appellant was aware of the hearing, and if so to ascertain whether there were any good reasons for non-attendance. If there had been even a cursory investigation of the documents uploaded to CCD, it would have been apparent that the appellant intended to attend his CVP remote hearing, and his Counsel having filed in good time a copy of the section 84 form. In the circumstances I agree with the respondent that the decision is subject to procedural unfairness and a material error of law exists.
13. It can properly be observed that the failure by the Judge to undertake two elementary steps, namely checking CCD and requesting that the representatives on record be contacted to ascertain the reasons for non-attendance has led to the decision being set aside some nine months after the appellant attended the remote hearing, ready to advance his case.

Renewed Hearing

14. The Upper Tribunal notes that the presumption that a resumed hearing will be retained. However, through no fault of his own, the appellant has been denied a hearing before the First-tier Tribunal consequent to procedural unfairness. In those circumstances I agree with both representatives that the only proper course is for the resumed hearing to be heard by the First-tier Tribunal sitting in Birmingham.

New Matter

15. Since the hearing of the appeal before the Judge the appellant's wife has given birth to their child. As I observed to Mr Khan, it rests upon the appellant to request that the respondent detail whether the birth is, or is not, considered to be a new matter, and if it is whether consent is given for it to be relied upon at the remitted hearing. Additionally, the appellant is properly to file and serve relevant evidence.
16. It is not appropriate for the Upper Tribunal to give directions to either the respondent or the First-tier Tribunal on this issue as the matter is to be remitted. However, I consider it proper to observe that the baby is a British citizen.

Notice of Decision

17. The decision of the First-tier Tribunal dated 7 November 2022 is subject to material error of law and is set aside.
18. No findings of fact are preserved.
19. The resumed hearing of this matter will take place at the First-tier Tribunal sitting in Birmingham to be heard by any Judge other than Judge of the First-tier Tribunal Joshi.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 July 2023