



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: UI-2024-  
002129**

**PA/51426/2023  
LP/01574/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 31 July 2024**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MS E S D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Ms J Isherwood, Senior Home Office Presenting  
Officer

**Heard at FIELD HOUSE on 16 July 2024**

**DECISION AND REASONS**

1. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on 29 April 2024 against the decision to dismiss the Appellant's protection appeal made by First-tier Tribunal Judge Rae-Reeves in a decision and reasons promulgated on or about 28 November 2023.

2. The Appellant, a national of Ethiopia born on 30 August 1980, claimed asylum on the basis of her political opinion. Her initial application was refused by the Secretary of State for the Home Department in November 2018 and was dismissed on appeal to the First-tier Tribunal by Judge Row on 30 January 2019. Permission to appeal to the Upper Tribunal was refused.
3. The Appellant submitted a fresh political opinion claim based on her *sur place* activities on 22 February 2022 which was refused on 15 February 2023.
4. Her appeal first came before Judge Rae-Reeves on 8 November 2023. The Appellant's representative was present but the Appellant failed to attend. Her representatives were recorded as having tried to contact her without success. The appeal hearing was adjourned. The same occurred on 28 November 2023. The Judge decided that the interests of justice required that the hearing should proceed in the Appellant's unexplained absence, on submissions only. Submissions were duly made. The Judge noted that Devaseelan [2002] UKIAT 702 applied. He found that the Appellant's political activities in the United Kingdom were minor and that her mental health problems did not reach the Article 3 ECHR threshold. The appeal was dismissed.
5. In her Notice of Appeal to the Upper Tribunal, the Appellant maintained in summary that she was not notified of either hearing date by her representatives and so was unable to attend. Had she known of the hearing date and place she would have attended. The Appellant had complained to her representatives about their conduct of her case but had received no response.
6. There was a rule 24 notice from the Respondent, which Ms Isherwood summarised. The appeal was opposed. There was no evidence to support the Appellant's claim that she had complained to her representatives. Her representative had attended both hearings. The Appellant had had her opportunity. She had not explained how she did not receive the notices of hearing and yet was aware of the decision dismissing her appeal.

7. Through the Tribunal's interpreter the Appellant reiterated her position as set out in the Notice of Appeal to the Upper Tribunal. She had not been informed of any of the hearing dates. She had produced her letters of complaint to her representatives. She wanted to have the proper hearing to which she was entitled.
8. It is clear from the documents produced that the Appellant has complained to her representatives. No copy of any response was available. The only means of establishing where fault lies (if any) would be by means of a separate hearing, which would in the circumstances amount to costly and wasteful satellite litigation. It will be a better use of the jurisdiction's resources simply to reconvene the Appellant's substantive appeal hearing. If the Respondent deems it necessary, the Appellant can be cross examined on her failure to attend either hearing in November 2023, and its bearing on her credibility. The Tribunal does not encourage that, in particular because it notes that the Appellant's address is effectively in hostel accommodation, making postal difficulties a distinct likelihood.
9. Thus the Tribunal finds that there was a material error of law which resulted, inadvertently, in procedural unfairness to the Appellant. Judge Rae-Reeves was not to know of any difficulties of communication between the Appellant and her solicitors. He was simply told that the Appellant was not present and there was no explanation for her absence. He prepared a full and careful decision after hearing submissions. His actions cannot be faulted. It is only with the benefit of hindsight that it can be seen that a procedural error leading to unfairness occurred.
10. The regrettable result is that the Judge's decision was unsafe and must be set aside, with no findings preserved. As the Tribunal explained to the Appellant, it is important that she ensures that her appeal is ready to be reheard in the First-tier Tribunal, whether or not she has been able to obtain a legal representative. The Appellant should also notify the First-tier Tribunal and the Home Office of her email address and ensure that she monitors her emails carefully. If she has a mobile phone that number should also be provided.

**DECISION**

The appeal to the Upper Tribunal is allowed.

There was a material error of law in the First-tier Tribunal's decision and reasons, which is accordingly set aside, with no findings preserved.

The Appellant's appeal shall be reheard before a First-tier Tribunal judge at the Hatton Cross hearing centre (except First-tier Tribunal Judge Rae-Reeves).

**Signed R J Manuell Dated 29 July 2024**

**Deputy Upper Tribunal Judge Manuell**