



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

Appeal Number: HU/07153/2015

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

Decision &

Reasons

On 18th August 2017

Promulgated

On 21 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**MR. BASHIR JAMA NOOH
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. G Hodgetts, instructed by South West Law

For the Respondent: Mr. Irwin Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of FtT Judge Thomas promulgated on 7th September 2016, in which she dismissed the appeal by the

appellant against the respondent's decision of 28th August 2015 to refuse him entry clearance as the spouse of a refugee.

2. The appellant is a national of Somalia. At paragraph [6] of her decision the FtT Judge notes that the appellant had previously applied for entry clearance on the same basis and an appeal against that previous refusal was dismissed for the reasons set out in a decision promulgated on 30th June 2014. The evidence before the Judge is set out at paragraphs [9] to [14] of her decision. The Judge summarises the evidence at paragraphs [16] to [21] of her decision. At paragraphs [23] to [24], the Judge correctly identifies the guidance that is set out in **Devaseelan [2002] UKIAT 00702** and properly notes that the starting point for the purposes of the appeal before her, is the previous decision of FtT Judge Ford. At paragraph [25] of her decision the Judge sets out the grounds upon which FtT Judge Ford dismissed the previous appeal.
3. It is the subsequent application of the guidance by the FtT Judge, that is at the heart of the appeal before me. The appellant contends that there were witness statements and documents put before the FtT that the Judge simply dismisses because they do not relate to facts happening since the decision of FtT Judge Ford. The appellant contends that the Judge, whilst entitled to take the decision of FtT Judge Ford as a starting point, should have engaged with the new evidence rather than treating herself as bound by the previous decision.
4. Permission to appeal was granted by First-tier Tribunal Judge Gillespie on 1st December 2016. The matter comes before me to consider whether or not the determination by FtT Judge Thomas involved the making of a material error of law.
5. The respondent filed a Rule 24 response dated 26th January 2017. The respondent opposed the appeal. However, before me, Mr Richards on behalf of the respondent conceded that the decision of the FtT Judge

discloses a material error of law. He accepts that the FtT Judge appears to have treated herself as bound by the previous decision of FtT Judge Ford, rather than engaging with the new evidence and considering whether it was capable of undermining the findings previously made. He accepts that the Judge does not appear to have considered the explanations advanced by or on behalf of the appellant, that seek to explain matters identified by FtT Judge Ford in her decision.

6. Mr Richards was right to make that concession. I have carefully read the decision of the FtT Judge. The Judge was entitled to treat the fresh evidence with some circumspection, but although the decision is thorough, the Judge appears to have treated herself as bound by the previous decision without making findings of her own, as to the fresh evidence adduced before her, that had not been before the Tribunal at the time of the previous decision. The outcome of the appeal might well have been the same, but I cannot be sure that it would have been. The error of law is one that is therefore capable of affecting the outcome of the appeal.
7. The decision needs to be re-made and, as suggested by the parties, I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012 which states;

'7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;

- (a) 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; or

(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.'

8. In my view, the requirements of paragraph 7.2(a) and (b) apply. The Judge has failed to set out, and carefully consider in her decision the evidence before her. The nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

9. The decision of the First-tier Tribunal is set aside.
10. The matter is remitted to the First-tier Tribunal for hearing afresh.

Signed _____ Date 18th August 2017

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

As I have set aside the decision of the First-tier Tribunal and remitted the matter for re-hearing I make no fee award.

Signed _____ Date 18th August 2017

Deputy Upper Tribunal Judge Mandalia

