



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

Appeal Number: HU/01087/2019 (V)

THE IMMIGRATION ACTS

**Heard Remotely by Skype for Decision & Reasons Promulgated
Business
at Cardiff Civil Justice Centre
On 15 October 2020**

On 21 October 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MARIAM SAIDU KAMARA

Appellant

and

THE ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:

For the Appellant: No appearance (at 12 noon); sponsor (at 1.45pm)

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sierra Leone who was born on 10 May 1990.
2. On 25 September 2018, the appellant made an application for entry clearance to join her partner, Titus Boye-Thompson in the UK under Appendix FM of the Immigration Rules (HC 395 as amended).
3. On 6 December 2018, the Entry Clearance Officer (“ECO”) refuse her application. He was not satisfied that she met a number of requirements in Section E-ECP of Appendix FM, including that she was coming to the UK

to enable her to marry the sponsor, the financial requirements of the Rules and the English Language requirement. Further, the ECO concluded that the decision did not result in unjustifiably harsh consequences and so was not a breach of Art 8 of the ECHR. On 21 March 2019, the Entry Clearance Manager maintained the ECO's decision to refuse the appellant entry clearance.

4. The appellant appealed to the First-tier Tribunal. The appeal was heard on 4 October 2019. There was no appearance by the sponsor, who was her nominated representative by this time. Judge Abdar, nevertheless, decided to hear the appeal in his absence. In a decision promulgated on 29 October 2019, Judge Abdar dismissed the appeal. The judge was not satisfied that the appellant met the 'partner' rule in Appendix FM and, as the sole ground of appeal, that the decision breached Art 8 of the ECHR.
5. The appellant appealed to the Upper Tribunal on the ground that there had been a procedural irregularity, namely that the appellant (and sponsor as her representative) had not received notice of the hearing and that was why the sponsor had not attended on 4 October 2019.
6. On 16 March 2020, the First-tier Tribunal (Judge Bristow) granted the appellant permission to appeal on the basis that it was arguable that there had been a procedural irregularity in notifying the appellant and sponsor of the hearing.
7. As a result of the COVID-19 crisis, the UT issued directions on 13 August 2020 expressing the provisional view that the error of law issue should be decided without a hearing. The parties were invited to make written submissions in respect of the substantive issue in the appeal and also whether a hearing was necessary.
8. In response, on 25 August 2020 the ECO filed a rule 24 reply conceding, in the light of submissions made on the appellant's behalf by the sponsor on 18 August 2020, the error of law on the basis upon which permission was granted (namely procedural irregularity) and accepting that the appeal should be remitted to the First-tier Tribunal for a fresh hearing. The sponsor also made submissions.
9. The appeal was listed for a remote hearing by Skype for Business on 15 October 2020 at 12 noon when I was based in the Cardiff Civil Justice Centre. Mr Howells, who represented the ECO, took part via Skype for Business.
10. The appellant and sponsor did not attend the hearing via Skype for Business at the listed time of 12 noon. At that time, I was satisfied that the appellant had been notified of the hearing by e-mail on 23 September 2020 and the sponsor was aware there was to be a remote hearing as he had e-mailed the UT on 25 September 2020 giving his (and the appellant's) details "for the purposes of the forthcoming remote appeal".

11. Prior to the hearing, Mr Howells e-mailed the UT on 12 October 2020, accepting (as had the rule 24 reply), that the FtT's decision should be set aside because of a procedural error and the appeal remitted to the FtT for a fresh hearing. In those circumstances, I concluded there was no prejudice to the appellant in my hearing the appeal without the sponsor taking part. I concluded that it was in the interests of justice to hear the appeal in the absence of the appellant (and her representative, the sponsor) under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
12. However, shortly after the hearing was concluded, I was informed by e-mail from Field House that the sponsor had been in touch with the "Contact Centre" around 12.20pm informing them that he had been unable to log on to the Skype hearing because of technical difficulties. Thereafter, I was informed, again by Field House, that the sponsor had now logged onto the Skype hearing which had, by that time, concluded. As a consequence, I made arrangements through the court staff to contact Mr Howells and to re-convene the hearing by Skype with the sponsor taking part. That was achieved at 1.45pm.
13. Mr Howells maintains the respondent's concession and invites me to remit the appeal to the FtT for a fresh hearing on the basis that there was a procedural error such that the appellant (and sponsor) were not given notice of the FtT hearing and, as a result, the appellant was prejudiced.
14. I explained the respondent's concession to the sponsor and he informed me that, in addition to appellant and he having married, he now had a job and his wife had obtained her degree through the medium of English. He indicated that he would send the new evidence both the reconsideration unit at the Home of Office and to the FtT when the appeal was listed.
15. I agree with the respondent's concession. Based on the material submitted with the appeal, the appellant has been denied the opportunity to take part in the hearing (through her representative the sponsor). That is a material error of law even though it was not through any fault of the judge.

Decision

16. The FtT's decision involved the making of an error of law and the decision cannot stand. I set aside the decision.
17. The appellant has been denied a hearing in the FtT because of the procedural error. In those circumstances, having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Abdar.

Signed

Andrew Grubb

Judge of the Upper Tribunal
15 October 2020