



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15144/2019
(P)**

THE IMMIGRATION ACTS

Decided under rule 34

**Decision & Reason Promulgated
On 19 November 2020**

Before

UT JUDGE MACLEMAN

Between

LILI WAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. This determination is to be read with:
 - (i) The SSHD's decision dated 28 August 2019.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Gurung-Thapa, promulgated on 8 November 2019.
 - (iv) The SSHD's grounds of appeal to the UT.

- (v) The grant of permission by FtT Judge R C Campbell, dated 4 August 2020, on the view that the decision arguably lacked reasoning on how the requirements of the rules were met at the date of the hearing, and did not show due weight given to the public interest.
 - (vi) The UT's directions, issued with a view to deciding without a hearing whether the FtT erred in law and, if so, whether its decision should be set aside; and giving parties the chance to submit on whether there should be a hearing.
 - (vii) The appellant's submissions in response, dated 15 September 2020.
3. Neither party seeks a hearing. The UT may now decide the above questions, in terms of rules 2 and 34, without a hearing.
 4. There is no submission on file from the SSHD.
 5. The FtT decision is terse. It is certainly arguable that it did not explain its finding that the requirements of the rules were met at the date of the hearing. That conclusion was not comprehensible, unless by reference to the underlying evidence. The appellant said in the FtT that the evidence was there, and continues to do so, tendering comprehensive bundles. The SSHD has not taken the matter any further, and so has not shown that the decision should be set aside on this point.
 6. On proportionality, or the weighing of the public interest, it is far from axiomatic that compliance with the rules at the date of an appeal hearing, rather than by tendering all required evidence with an application, leads to success. It is often proportionate to expect compliance by way of a fresh application. Equally, however, there is no fixed rule the other way, that a fresh application should always be expected. The FtT has said nothing about why it came down on the side it did. The issue was, at least, finely balanced. Again, however, as the SSHD has not sought to advance the matter any further, no error of law has been shown by the FtT coming down on the side it did.
 7. In the alternative, if the decision of the FtT had been set aside, on all currently available information I would have held that the appellant meets the requirements of the rules at this date, other than in formal respects, and that, on a fine balance, the public interest does not require that she is put to making a further application.
 8. The decision of the First-tier Tribunal shall stand.
 9. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman
13 November 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.