



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

Appeal Number: HU/19330/2018 (P)

THE IMMIGRATION ACTS

**Decided without a hearing
On 14 December 2020**

**Decision & Reasons Promulgated
On 14 December 2020**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**ZEENAT BI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. This is an appeal, with permission granted by FtT Judge Adio, against a decision which was issued by Judge Lodge following a hearing in Birmingham on 22 May 2019. The judge dismissed the appellant's appeal on human rights grounds.
2. The appellant did not attend the hearing before the judge. In the grounds of appeal before Judge Adio, the appellant explained how it was that she came not to attend the hearing. Judge Adio noted that the judge could not be faulted for the decision to proceed in the appellant's absence but that it appeared to be the case that the appellant was not aware of the hearing and that it was arguable, in these circumstances, that there had been a procedural irregularity.
3. The papers were placed before me on 7 September 2020, on which date I signed directions to the parties which were as follows:

[1] It is my provisional view that the decision of the First-tier Tribunal (Judge Lodge) is vitiated by procedural irregularity for the reasons given by Judge Adio in granting permission. In sum, the difficulty is that the appellant was unaware of the hearing before Judge Lodge

because the person who had previously been assisting her, to whom the notice of hearing had been sent, had passed away.

[2] As explained by Judge Adio, these assertions appear to be supported by what is and is not on the Tribunal's file, including the fact that the appellant had timeously responded to other communications. In the circumstances, I am minded to find that the decision of the FtT involved the making of an error on a point of law and to set aside that decision and remit the appeal for hearing afresh before another judge of the FtT.

[3] I therefore direct that either party has 14 days from the date on which these directions are issued in which to make representations on the course set out immediately above. In the event that no such submissions are received, the Upper Tribunal is likely to make the order above without a hearing or further directions.

4. My directions were sent to the parties by email on 23 October 2020. To date, there have been no submissions received from either party. In the circumstances, I consider it fair and just to determine this appeal without a hearing under rule 34. The parties have had an opportunity to make submissions on the single issue which arises and the proper outcome is, in my judgment, appreciably clear.
5. I am satisfied that the decision of the judge is vitiated by procedural impropriety for which he bears no responsibility. The notice of hearing was demonstrably sent only to a person at the Coventry Muslim Resource who had been assisting the appellant as a McKenzie Friend but she was not aware of it and he has passed away during the pandemic. Like Judge Adio, I note that the appellant has responded promptly to other communications and I am prepared, on balance, to accept that she was not aware of the hearing and that she would have wished to attend if she had known about it.
6. The proper course, in the circumstances, is for the decision of the FtT to be set aside in its entirety and for the appeal to be remitted to the FtT for hearing afresh by a judge other than Judge Lodge.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the FtT is set aside and the appeal is remitted to be heard afresh in the FtT.

No anonymity direction is made.

Postscript

The decision set out above was sent to the Upper Tribunal's administrative staff for promulgation on 18 November. On 20 November, Fordham J handed down judgment in R (JCWI) v President of UTIAC [2020] EWHC 3103 (Admin). I have considered whether to alter the decision above in light of what was decided by the Administrative Court and have decided not to do so. In a case such as this, it would have been appropriate to proceed without a hearing irrespective of the pandemic and the guidance notes issued as a result of it. Indeed, the procedure which was followed in this case – of identifying a procedural irregularity in the FtT's process and giving the parties an opportunity to comment on a likely set aside – has been followed for at least the last two decades. The parties have had an opportunity to comment on the

outcome which was foreshadowed in my directions and chose not to do so. The proper course remains for the decision to be set aside and the appeal remitted to the FtT. No proper purpose would be served in seeking further submissions, orally or in writing.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 January 2021