



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003223
First-tier Tribunal No:
PA/52582/2021
IA/12374/2021

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On 5 April 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

D U
[ANONYMITY ORDER MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decided on the papers at Field House on Wednesday 22 February 2023

DECISION AND REASONS

1. By directions issued on 10 February 2023, I sought written submissions on disposal of this appeal following the Respondent's concession that the decision of First-tier Tribunal Judge Housego promulgated on 6 June 2022 ("the Decision") dismissing the Appellant's appeal contains an error of law.
2. My directions decision is attached for ease of reference. That confirms the nature of the Appellant's challenge to the Decision, the extent of the Respondent's concession and my acceptance of the concession. The concession and my acceptance of it turns on there being a procedural error due to the Judge's failure to permit an adjournment to allow a medical report to be obtained. I invited submissions as to whether the appeal should be remitted to the First-tier Tribunal or retained in this Tribunal following the setting aside of the Decision.

3. The Respondent made submissions dated 16 February 2023. She noted that it was accepted that “the proceedings may have been procedurally unfair” and noted that, “[i]n these circumstances, the appropriate course may well be for the appeal to be heard afresh in the First-tier Tribunal (by a Judge other than FTTJ Housego).” She indicated however that she was neutral as to the appropriate course and left it to this Tribunal to determine whether to remit to the First-tier Tribunal or retain the appeal for re-making.
4. The Appellant’s solicitors also made submissions on 16 February 2023, indicating the Appellant’s “agreement for the hearing to be remitted back to the First Tier Tribunal for remaking”.
5. Having regard to the Practice Statement in relation to disposal of appeals once an error of law is found to exist and having regard also to the guidance given by this Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), in circumstances where the Appellant may have been deprived of a fair hearing in the Tribunal below, I consider it appropriate to remit the appeal to the First-tier Tribunal for re-hearing by a Judge other than Judge Housego. No findings are preserved.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Housego promulgated on 6 June 2022 contains an error of law. I set aside Judge Housego’s decision with no findings preserved. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Housego.

L K Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 February 2023

APPENDIX: DIRECTIONS DECISION



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003223

First-tier Tribunal No: PA/52582/2021

THE IMMIGRATION ACTS

Directions Issued:
10 February 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

D U
[ANONYMITY ORDER MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DIRECTIONS

- 1. The parties are directed to make written submissions by 4pm on Friday 17 February 2023 in relation to the disposal of this appeal following the Respondent's Rule 24 reply dated 29 July 2022 conceding that the First-tier Tribunal's decision contains an error of law.**
- 2. In the event that no submissions are received by the above deadline the hearing on 22 February 2023 will proceed as listed.**

REASONS

- 1. The Appellant appeals against the decision of First-tier Tribunal Judge Housego promulgated on 6 June 2022 dismissing his appeal ("the Decision"). Permission to appeal was granted by First-tier Tribunal Judge Singer on 11 July 2022 on all grounds. The appeal is listed as an error of law hearing before me (sitting with a Deputy Judge) on 23 February 2023.**

2. The grounds of appeal are three-fold. First, the Appellant says that the Judge's refusal to permit an adjournment of the hearing before him was procedurally unfair. Second, the Appellant says that the Judge adopted the wrong starting point in relation to risk to him given the acceptance that his father is a refugee. Third, the Appellant asserts that the Judge has failed to consider what might be the impact of the documentation process on the risk to the Appellant of return to Sri Lanka.
3. The Respondent filed a Rule 24 Reply on 29 July 2022. She indicated that she did not oppose the Appellant's application to appeal and invited the Tribunal "to determine the appeal with a fresh oral hearing to consider whether the appellant requires international protection". She also indicated that she considered that the hearing before Judge Housego "was arguably procedurally unfair because of the refusal of an adjournment to revise a draft psychiatric report following a change in the appellant's circumstances". She also accepted that the Appellant's father has been granted refugee status because of his involvement with the TGTE and submitted that "[i]t appears that the FtT diminished the possible importance of this factor as an indicator of risk to the appellant".
4. The Tribunal is prepared to accept the Respondent's concession. However, it is not clear whether the Appellant agrees to the proposed course of the appeal once an error of law in the Decision is found to exist. In particular, having regard to the Practice Statement in relation to disposal of appeals once an error of law is found to exist, in circumstances where an appellant is found to have been deprived of a fair hearing, it might be more appropriate for the appeal to be remitted. I do not express a concluded view in that regard.
5. The Appellant has not responded to the Rule 24 Reply and therefore it is not clear to me whether he is content for the appeal to remain in the Upper Tribunal or seeks a remittal to the First-tier Tribunal.
6. In order to avoid the necessity of a hearing on 23 February, I am therefore giving the parties the opportunity to make submissions to the Tribunal as to the appropriate course. In the event that submissions are made and the way forward is agreed, the hearing need not go ahead. A decision can be made on the papers. In the event that submissions are not made by the deadline given or the position is not agreed, the hearing will proceed as listed.

L K Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 February 2023