



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000716
First-tier Tribunal Nos: PA/51640/2022
IA/04353/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KAS
(ANONYMITY ORDER IN PLACE)

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr K Wood, instructed by Immigration Advice Service (OISC)

Heard at Field House on 7 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

EX TEMPORE JUDGMENT

1. The Appellant in this appeal is the Respondent Secretary of State as described in the proceedings of the First-tier Tribunal. She appeals with permission a decision of Judge Caskie promulgated on 1st March 2023 following a hearing on 31st January 2023.

2. The grounds before me reduce to an issue of fairness in the conduct of the appeal in the absence of a Home Office Presenting Officer. The judge was advised on the day of the hearing that the Respondent's representative was unable to attend because the Home Office Presenting Officer assigned to represent on the day had fallen ill. The judge decided to proceed with the hearing taking into account an assessment of the issues that he had to decide. The grounds refer to points made in respect of the case of SA (Iraq) (the citation for which was not provided) that had the Respondent been present they might have raised. In response Mr Wood points out that the Respondent does not set out with any clarity what would have been achieved by their being present and asked me to infer that in reality this is a case where a fair decision resulting in an outcome which is not in accordance with the Respondent's view is being challenged without proper reasons. Mr Wood prays in aid the fact that the case of SA had been promulgated significantly before the Appellant's review of the appeal skeleton argument and therefore if the Respondent wanted to comment on SA Iraq, they have had plenty of time prior to the drawing up of the review in order to deal with that matter. Further, that the Appellant had not mentioned reliance on SA Iraq in the appeal skeleton argument is not a relevant consideration as it was a case which the Respondent would have been well aware of and did not need to be prompted to deal with by an appeal skeleton argument.
3. I have considered the arguments put forward by both representatives very carefully. I am satisfied that issues about the substance of the appeal obscure the crux of this matter which is about the fairness of proceedings in circumstances where the Respondent, and it may well just as well have been the Appellant, are unable to attend the hearing through sickness and indicating that they wish to have the opportunity to make oral submissions, and in this case have the opportunity to cross-examine any witnesses tendered. To proceed in the absence of the representative is to deprive whichever party they are representing of a proper opportunity to be represented in the face of the clear indication that that is their wish. In these circumstances it is apparent that I am satisfied that the decision is vitiated by legal error in that the matter is marred by procedural unfairness.

Decision

4. The First-tier Tribunal decision is vitiated by error. I set aside the decision and remit the appeal to be heard de novo at the First-tier Tribunal by a judge other than Judge Caskie.

EM Davidge

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 October 2023