



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal
IA/43404/2013**

Number:

THE IMMIGRATION ACTS

**Heard at Field House
On August 26, 2014**

**Determination
Promulgated
On August 27, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS AISSATA CAMARA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Osifeso (Legal Representative)
For the Respondent: Mr Deller (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant, citizen of Guinea, was born on July 16, 1991. She entered the United Kingdom on May 24, 2012 and on December 27, 2012 she applied for a residence card as the spouse of an EEA national. This application was refused under Regulation 6 of the Immigration (European Economic Area) Regulations 2006 on

October 9, 2013 on the basis there was limited evidence showing the sponsor was exercising treaty rights.

2. On October 21, 2013 the Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended, and Regulation 26 of the 2006 Regulations. On April 14, 2014 a notice was sent to the parties indicating that any written evidence and submissions must be received by the Tribunal by May 5, 2014.
3. On May 6, 2014 Judge of the First-tier Tribunal Cohen (hereinafter called "the FtTJ") dealt with this appeal on the papers. He noted that despite the concerns raised in the refusal letter no further evidence had been submitted. He dismissed the appeal in a decision promulgated on May 19, 2014.
4. The Appellant lodged grounds of appeal on May 22, 2014. She submitted that additional evidence had been sent to Taylor House on May 2, 2014 and had been received by the Tribunal on May 6, 2014. She said there had been a procedural unfairness and the decision should be set aside. Permission to appeal was granted by Judge of the First-tier Tribunal Nicholson on June 25, 2014 because he found it arguable there had been a procedural unfairness for the reason given in the grounds.
5. The matter came before me on the date set out above. Neither the appellant nor sponsor was in attendance.
6. The file contained a certificate of posting and this confirmed a letter/parcel had been sent to the Tribunal on May 2, 2014. This was the Friday before the May Bank Holiday. This meant any papers sent could not be delivered (they had to be signed for) until May 6, 2014 because the Tribunal was shut on May 3 and 5, 2014.
7. Mr Deller accepted that Rule 57(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 provides-

"... Where the time specified by these Rules or by a direction of the Tribunal for doing an act ends on a day which is not a business day that act is done in time if it is done on the next business day."
8. Mr Deller accepted it was arguable the notice sent out to the parties on April 14, 2014 was a direction and consequently the papers that had been sent on May 2, 2014 were received in time.
9. The papers had clearly not come to the FtTJ's attention as he made it clear in his determination at paragraph [10] that no additional paperwork was before him other than the papers lodged with the application and appeal notice.

10. Mr Deller also accepted that in paragraph [9] the FtTJ had incorrectly stated the relevant date for him was the date of decision whereas it should have been the date of hearing. He also wrongly made a finding under paragraph 321A of the Immigration Rules.
11. In short, Mr Deller accepted there had been errors in the determination and on the basis there was an apparent irregularity he did not contest the error of law application.
12. Having established there was an error in law on the grounds of procedural unfairness I asked the representatives whether they had any strong views on where the case should next be heard. I had in mind at this point Part 3, Section 7.1 to 7.3 of the Practice Statement. They agreed this case should be remitted to the First-tier Tribunal.
13. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

“Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b) (i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.”

14. In light of the reason for the error in law I was satisfied this was a case that should be returned to the First-tier Tribunal.
15. I made the following directions:
 - i. The case will be listed for a one and half hour oral hearing at

Taylor House on March 11, 2015.

- ii. The appellant's representatives must file and serve on both the Tribunal and respondent a complete bundle of evidence to be relied on. This should include witness statements from both the appellant and sponsor. The evidence should address the concerns raised in the refusal letter.
- iii. The appellant's bundle of documents must be filed no later than 4pm February 15, 2015.

Decision

- 16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
- 17. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.



Date:

DEPUTY UPPER TRIBUNAL JUDGE ALIS
IMMIGRATION AND ASYLUM CHAMBER