



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

Appeal Number: IA/29782/2014

THE IMMIGRATION ACTS

**Heard at Field House
on 19 August 2015**

**Determination Promulgated
On 21 December 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NABILA KOUSER

(Anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr Tufan Senior Home Office Presenting Officer

For the Respondent: Ms K Reid instructed by Hilcrest Solicitors LLP

DECISION AND REASONS

1. This is an appeal against a determination of First-Tier Tribunal Judge Majid, promulgated on the 24 March 2015 following a hearing at Taylor House on the 18 March 2015, in which the judge allowed the appeal against the Secretary of States refusal of the application for leave to remain in the UK under the Immigration Rules.

Discussion

2. Miss Kouser was represented before the Upper Tribunal by Miss Reid who sought an adjournment on the basis Mr Singer had been instructed to represent Miss Kouser but he had to return home as a result of a family issue meaning she only saw the papers at 1.00 pm. The case was listed for 2.00pm. It was claimed not all the papers were available as some were with Mr Singer. Papers had been handed to her but she had only had them for about 25 minutes.
3. The challenge by the Secretary of State refers to the fact Judge Majid allowed the appeal under what is described in the determination as ‘the relevant Immigration Rules’ and Article ECHR. The Judge failed, however, to specify which rule was relevant or how or why it was satisfied. In relation to Article 8 ECHR there is no indication the Judge had any regard to section 117 of the Nationality, Immigration and Asylum Act 2002 making the assessment fundamentally flawed – Dube [2015] UKUT 00090 refers.
4. It was indicated to Miss Reid that the Tribunals preliminary view was that the determination was infected by material legal error of the type identified in the grounds of challenge and that the determination should be set aside and the appeal remitted to enable both parties to receive a proper hearing which they had not received to date.
5. Miss Reid was granted further time to take instruction from her client after which she accepted that the determination was poor and agreed with the proposal to remit.

Decision

6. **The First-tier Tribunal Judge materially erred in law for the reasons set out in the respondent’s grounds of challenge. I set aside the decision of the original Judge. I remit the appeal to be re-heard by a salaried judge of the First-tier Tribunal sitting at Taylor House other than Judge Majid.**

Anonymity.

7. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 10 December 2015