



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04398/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21st June 2016

Decision & Reasons Promulgated
On 04th July 2016

Before

UPPER TRIBUNAL JUDGE DEANS

Between

[E D]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan of Counsel, instructed by Atlantic Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Somal dismissing an appeal against a refusal to vary leave.
2. According to the Judge of the First-tier Tribunal, the Appellant had failed to submit grounds of appeal. According to the judge, directions were issued to the Appellant and to her representative on 10th September 2015 requiring grounds of appeal to be lodged by 25th September 2015 but no grounds were submitted.

3. The appeal was considered without a hearing. The judge found that in the absence of any grounds of appeal there was no basis for concluding that the decision by the Secretary of State was not made in accordance with the Immigration Rules.
4. In the application for permission to appeal it is contended that grounds of appeal were submitted with the original Notice of Appeal. The directions purportedly issued on 10th September 2015 were never received either by the Appellant or her solicitors. On 14th September 2015 the solicitors sent an email to the Tribunal requesting an oral hearing and this was acknowledged but not acted upon.
5. Permission to appeal was granted on the basis that there were grounds of appeal stated in the original Notice of Appeal and arguably the judge erred by failing to have regard to these. It was further stated in the grant of leave that although it seemed unlikely that neither the Appellant nor the representatives would have received the direction, it was a possibility that the direction was never issued.
6. At the commencement of the hearing before the Upper Tribunal I pointed out to the parties I was the judge who granted permission to appeal. The parties proceeded with the hearing in this knowledge.
7. For the Appellant, Mr Khan relied on the grounds of the application for permission to appeal. Mr Bramble had nothing to add to the papers before me.
8. I note that in the original Notice of Appeal grounds of appeal were inserted on page 9 in Box 3. These state the following:
 - “1. The Appellant enjoys family life with her nephew which is beyond normal emotional ties, in line with the test set out in *Kugathas* [2002] EWCA Civ 31.
 2. The Appellant will argue that interference with the relationship with her nephew is disproportionate.
 3. The Appellant will argue that in reaching the decision to refuse, the Secretary of State failed to give adequate consideration to affected third parties in line with case law.
 4. Finally, the Appellant will show that the Secretary of State’s assessment of the care provided by the Appellant to her nephew and the reason for it was inadequate.”
9. It is clear that the judge failed to have regard to the grounds of appeal as submitted with the original Notice of Appeal. By so doing the judge erred in law and the decision should be set aside.
10. There is in the appeal file a copy of the directions issued on 10th September 2015 to both the Appellant and her solicitors asking for grounds of appeal to be submitted. While it appears that this notice was issued on that date, the notice was sent out in

error because grounds of appeal had already been submitted with the Notice of Appeal. Accordingly, I attach no weight to the lack of any response to this notice.

11. I further note from the appeal file that an email was sent from the Appellant's solicitors on 14th September 2015 requesting an oral hearing. It is clear that although this email was stored in the file it did not come to the attention of the judge. There appears from the correspondence to be a factual dispute as to whether the Appellant had paid a fee of £140 for an oral hearing or £80 for a paper hearing. This dispute does not appear to have been resolved and this may account for the fact that the appeal was not listed for oral hearing as requested. The judge ought nevertheless to have been aware that such a request had been made.
12. In the circumstances, as the Appellant was denied proper consideration of her appeal, there is no alternative but to remit the appeal to the First-tier Tribunal for a hearing before a different judge with no findings preserved.
13. For the avoidance of doubt, I direct that the appeal be listed for an oral hearing. In view of the way in which this matter has been dealt with by the First-tier Tribunal I should add that the decision to list the appeal for an oral hearing is made by judicial direction and therefore there should be no requirement for the Appellant to pay any additional fee, should the fee for an oral hearing not already have been paid. In other words, the question of whether any additional fee payable is closed.
14. There has been no application for any anonymity order and I see no reason for making such an order.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal for an oral hearing by judicial direction before a different judge with no findings preserved. No additional fee is payable.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I make no order for the reasons set out above.

Signed

Date: 4th July 2016

Upper Tribunal Judge Deans