



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06791/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 July 2018

Decision & Reasons Promulgated  
On 23 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

I B  
(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: The Sponsor in person  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge O R Williams (the judge), promulgated on 13 March 2018, in which he dismissed the Appellant's appeal against the Respondent's refusal, dated 19 February 2016, to issue

her with a family permit under the Immigration (European Economic Area) Regulations 2006. The Appellant's case was that she was the minor daughter of the Sponsor, Ms M, who was in turn a family member of an EEA national, Mr G. In refusing the application the Respondent did not accept either of these two claimed relationships.

### **The judge's decision**

2. The appeal was listed for oral hearing and came before the judge on 6 March 2018. The judge noted that the Appellant was not legally represented and no one attended the hearing on her behalf. Further, there had been no application for an adjournment. Having considered Rules 2 and 4 of the Tribunal Procedure Rules the judge concluded that it would be fair and just to proceed with the hearing. This he did. On the evidence before him, which appears to have been very scant indeed, the judge agreed with the Respondent and concluded that the Appellant was not related to Ms M as claimed, nor was Ms M related to Mr G. The appeal was duly dismissed.

### **The grounds of appeal and grant of permission**

3. The grounds appear to have been written by Ms M herself. She asserts that she did not receive the notice of hearing until the afternoon on the day of the hearing itself. The grounds state that Ms M rang the Tribunal and informed them of this. She was told to write in, and this she did. The grounds ask for a "rehearing of the appeal".
4. Permission to appeal was granted by First-tier Tribunal Judge Mailer on 8 May 2018. In so doing he agrees that it was arguable that there may have been procedural unfairness.

### **The Hearing before me**

5. Ms M attended the hearing. I provided her with a full introduction and an explanation of the background to the case and the nature of the proceedings before me. I was satisfied that Ms M understood all of this. I showed her a copy of form IA35 (the notice of hearing), which had apparently been sent out by first class post to Ms M's address on 22 February 2018. Ms M confirmed that she had not received this until the day of the hearing before the First-tier Tribunal. Having looked through the papers on file I found the handwritten letter from Ms M to the First-tier Tribunal (at the Manchester Hearing Centre) referred to in the grounds of appeal. That letter is consistent with the grounds and what Ms M told me at the hearing.
6. I then also referred Ms M to another form (IA28), which had apparently been sent out to Ms M's address on 1 November 2017. This form contained two dates, one for the prehearing review and the other for the substantive hearing on 6 March 2018. I asked Ms M if she had ever received this document to which she replied that she had not. I

asked Mr Kotas for any observations. He noted that there would be a presumption of service by first class post and that it was perhaps odd that Ms M had seemingly not received the IA28 at all and only received the IA35 several days after it had been posted.

7. I reserved my decision on the error of law question.

### **Decision on Error of Law**

8. I conclude that there was inadvertent procedural unfairness in the making of the First-tier Tribunal's decision and that this constitutes a material error of law.
9. I am just about prepared to accept that Ms M in fact only received the IA35 on the day of the hearing before the First-tier Tribunal, and she did not receive the IA28 form at all.
10. I bear in mind of course a presumption of service by post and this would count against the assertions made by Ms M. Having said that, I am satisfied that Ms M rang the hearing centre immediately after she found the IA35 when she got home from work on the day of the hearing. It has not been suggested that she did not in fact call. I am satisfied that this indicates a genuine intention to have engaged with the appeal process. I am also satisfied that she did in fact write to the Tribunal, as requested, and this too indicates engagement with the process. Ms M has also travelled down from her home in Milton Keynes to the Upper Tribunal error of law hearing. This further strengthens my view that she is and always has been intent on prosecuting her claimed daughter's appeal. As far as I can see, there would have been no benefit whatsoever for Ms M to have intentionally failed to appear at the hearing before the judge. It would have been obvious to her that this would have severely prejudiced the prospects of the appeal's success. It is a possibility that Ms M received one or other of the notices but then forgot about the hearing. I consider that possibility to be sufficiently low as to not prove fatal to this appeal in the Upper Tribunal.
11. In light of the above and clearly through no fault of his own, the judge proceeded with the appeal when fairness required that he should not have. I set the judge's decision aside.

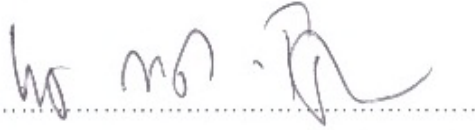
### **Disposal**

12. Mr Kotas accepted that if there was material error of law the appeal would have to be remitted to the First-tier Tribunal. I agree, with particular reference to paragraph 7.2 of the Practice Statement. This is a case where, because of the procedural unfairness, the Appellant has not had a proper hearing before the First-tier Tribunal at all.

**Notice of Decision**

**The decision of the First-tier Tribunal contains a material error of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal.**

A handwritten signature in black ink, appearing to read 'W. Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 20 July 2018

Deputy Upper Tribunal Judge Norton-Taylor