



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

Appeal Number: HU/01439/2017

THE IMMIGRATION ACTS

**Heard at Field House
On October 8, 2018**

**Decision & Reasons
Promulgated
On October 16, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**JUBLI [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel, instructed by Edward Alam & Associates

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

On December 18, 2007 the appellant entered the United Kingdom with entry clearance as a visitor and she had leave to remain in this country until May 27, 2008. On May 28, 2008 she applied for indefinite leave to remain but this was refused on February 11, 2009 with no right of appeal.

On January 8, 2015 the appellant lodged an application for leave to remain on human rights grounds but the respondent refused this on March 16, 2015 with no right of appeal. The pre-action Protocol to challenge that decision was served but the original decision was upheld and the appellant was subsequently served with various removal notices on August 19, 2016. Following the submission of further evidence the respondent reviewed the appellant's application for leave to remain and issued a fresh decision on October 6, 2016.

The appellant lodged an appeal on January 19, 2017 under section 82 of the Nationality, Immigration and Asylum Act 2002 but this appeal was lodged out of time. Tribunal Caseworker Early extended time on March 9, 2017 and the appellant's appeal subsequently came before Judge of the First-tier Tribunal Khan on April 16, 2018 and in a decision promulgated on May 21, 2018 the Judge rejected the appellant's appeal.

The decision recorded that the appellant had not attended the hearing and that she had an appointment to see her doctor later that day. The Judge noted there was a medical note stating that she suffered from depression and anxiety and that she was not fit for work and "might not be able to attend the court hearing due to severe anxiety". The Judge also had a further letter from her surgery confirming she suffered from depression and anxiety resulting in panic attacks. There had previously been a request for an adjournment which was dealt with administratively but this request was refused.

Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchison on August 20, 2017 as she found it arguable that as the appellant was unwell on the day of hearing the Judge was wrong to proceed.

The matter came before me on the above date and at the beginning of the hearing Mr Tarlow confirmed that he had discussed the matter with Mr Bellara and they agreed that the Judge had materially erred by not adjourning the case in circumstances where there was adequate evidence that the appellant was unfit to attend that hearing.

As the findings were based on her absence and her failure to address issues at the hearing both parties agreed that this was a case that would have to be remitted back to the First-tier Tribunal.

Section 12(1) of the Tribunals, Courts and Enforcement Act 2007 sets out the procedure where a case is to be remitted back to the First-tier Tribunal. I am satisfied that as there was a procedural unfairness that this is a case that will have to be remitted back to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal M A Khan.

DECISION

There is an error of law. I set aside the original decision and I remit the matter back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

No anonymity direction is made.

Signed

Date 10/10/2018

Deputy Upper Tribunal Judge Alis