



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

Appeal Number: HU/03382/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 29th November 2017**

**Decision & Reasons
Promulgated
On 17th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DANYYILA VYNNYTSKA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer
For the Respondent: No representative, litigant in person

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Ghaffar promulgated on 9th May 2017 allowing the appeal of the Appellant on the basis of her application on the basis of her human rights claim in respect of Article 8 of the European Convention of Human Rights following a refusal by the Secretary of State on 21st January 2016. The Secretary of State appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Pickup on 21st September 2017, the grounds upon which permission to appeal were arguable are framed in the following terms:

“The application for permission to appeal to the Upper Tribunal was not received until 20.7.17 and so is substantially out of time. The explanation is that subsequent to the decision, the Respondent received important information, dated 19.6.17, but only received by the Respondent on 17.7.17. It comprises a letter from the Appellant’s husband, completely contradicting the Appellant’s case before the First-tier Tribunal. In the circumstances, I extend time in the interests of fairness and justice.

It is arguable that the decision of the First-tier Tribunal was made on a false premise, or at least that the evidence was tainted so that the decision was made in error of law.”

2. I was not provided with a Rule 24 reply but was provided with a statement from the Appellant which arrived under cover of a letter dated 2nd October 2017 and numbered some seven pages and bore the same date alongside the Appellant’s husband’s statements of 21st November 2015 and 10th March 2017 and photos of the Appellant’s self-designed clothing collection.
3. Given that the Appellant was a litigant in person I asked the Secretary of State’s representative to make her submissions in extremely simple terms and I canvassed with the Appellant whether she understood all of the arguments made and ensured that she comprehended the procedure, the complaints against the First-tier Tribunal’s decision, and was able to ventilate her reasons in reply as to why that decision was free from error and was able to make any other submissions she saw fit.

Error of Law

4. At the close of the hearing I reserved my decision which I shall now give. I do find that there has been a procedural irregularity in the making of the decision of the First-tier Tribunal such that it should be set aside. My reasons for so finding are as follows.
5. As is clear from the grant of permission by Judge Pickup, the application by the Secretary of State to appeal was made out of time, however an extension of time was granted and the evidence from the Appellant’s husband was taken into account in determining the arguability of the Grounds of Appeal. For the sake of completeness I have looked at the evidence from the Appellant by way of her statement of 2nd October 2017 and also that of the husband by way of the typed document dated 9th June 2017 annexed to the Grounds of Appeal, which both constitute evidence that was not before the First-tier Tribunal but which I have admitted pursuant to Rule 15 of the Tribunal Procedure (Upper Tribunal) Procedure Rules 2008 in order to assist me in considering the extremely unusual scenario that this appeal has revealed.
6. It is said by the Secretary of State in her Grounds of Appeal that the reason for bringing the statement from the Appellant’s husband to the attention of the Upper Tribunal is because it was considered

“inappropriate to refuse to implement a Tribunal determination without a challenge”. Whilst this may not have been the best course of action as this evidence postdates the decision of the First-tier Tribunal, this evidence cannot in of itself necessarily reveal a material error in law unless it highlights a material mistake of fact.

7. In my view whilst this evidence from the Appellant’s husband and from the Appellant in reply does not highlight a mistake of fact *per se*, it does to my mind however highlight that the evidence before the First-tier Tribunal was incomplete and the picture given of the relationship between the Appellant and her husband was more complex and nuanced than the First-tier Tribunal Judge was told – both by the Appellant’s husband and by the Appellant. I have chosen my words carefully as it is not for me to make any decision upon that relationship, but I am satisfied, having seen the evidence from the Appellant’s husband and the Appellant that there are matters which ought to have been brought to the attention of the First-tier Tribunal Judge, putting it neutrally, which was not done by the Appellant’s husband at the very least, particularly if he harboured doubts about that relationship.
8. Given my view of the evidence I exercise the Tribunal’s powers pursuant to Rule 43(1) of the 2008 Rules and set aside the decision of the First-tier Tribunal as I consider it in the interests of justice to do so under sub-paragraph (1)(a) of Rule 43 and as in my view sub-paragraph (2)(d) applies to this scenario, namely that there has been some procedural irregularity in the proceedings which is what one can only describe of the present scenario where the Appellant’s husband has not revealed the full facts of his relationship with the Appellant to the First-tier Tribunal, again putting it neutrally, and where this evidence may have affected the Tribunal’s view as to the ‘loving and caring relationship’ described by the First-tier Tribunal Judge at paragraphs 12 and 16 of the decision.
9. Having set aside the decision of the First-tier Tribunal I was told by the Appellant that she wished the matter to be remitted to the First-tier Tribunal. Ms Willocks-Briscoe for the Secretary of State did not indicate any opposition to that request and given that this matter requires fresh findings of fact and will necessitate consideration of the evidence from the Appellant’s husband of 19th June 2017 and from the Appellant of 2nd October 2017, besides any other material that the Appellant or the Secretary of State wish to produce, my view is that it is sensible and fair and just to remit this matter to the First-tier Tribunal.
10. Although the Upper Tribunal will no longer be apprised of this appeal, in my view this appeal should be directed to the attention of the Resident Judge at IAC Taylor House. In my view it would also be only fair and just for a direction to be made that the Appellant’s husband attend any future hearing at the First-tier Tribunal (notwithstanding his disabilities) in order that he be deposed before the First-tier Tribunal so that he can give a comprehensive account of his relationship with the Appellant next time around but so he can also be susceptible to cross-examination by the

Appellant (or any future representative), should it prove necessary in her view in furtherance of her appeal.

Notice of Decision

11. The appeal to the Upper Tribunal is allowed. The making of the previous decision involved a procedural irregularity in the proceedings and has been set aside in the interests of justice pursuant to Rule 43 of the Procedure Rules 2008.

Directions

12. The appeal is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.
13. As discussed above, this appeal is to be directed for the attention of the **Resident Judge at IAC Taylor House** for any further case management, and so that **any suitable directions can be made for securing the attendance of the Appellant's husband.**
14. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Saini