



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/02598/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 27 January 2020

**Decision & Reasons
Promulgated**

On 6 February 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**H W
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - Sheffield

Respondent

Representation:

For the Appellant: Mr C Timson (counsel) instructed by Medlock solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, because the appellant is a minor and to

preserve the anonymity direction deemed necessary by the First-tier Tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Brookfield promulgated on 4 September 2019, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 23/02/2003 and is a Chinese national. On 09/11/2018 the Secretary of State refused the Appellant's application for leave to enter the UK to join his mother, stepfather and half-sister.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Brookfield ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 16 December 2019 First-tier Tribunal Judge Grant-Hutchison granted permission to appeal stating inter alia

"It is arguable that the Judge erred in law (a) by failing to take into consideration a translated copy of the birth certificate and the death certificate which the Judge specifically indicated that she would consider if filed with the tribunal after the date of hearing by a specific deadline, which was complied with when the Judge then holds in her decision and reasons that the said lack of such evidence goes against the appellant; (b) by failing to give adequate reasons for central core findings, such as why (i) the appellant's mother had not visited her child was somewhat insufficient and (ii) , the mere fact that the grandparent who is with the child on a daily basis, would decide if the appellant may need to see a doctor somehow contradicts in any way whatsoever the evidence from a paediatrician that it is the appellant's mother who makes the actual appointments."

The Hearing

5. Mr Tan, for the respondent, told me that the respondent no longer resists this appeal. It is conceded that the decision is tainted by material errors of law because the Judge did not consider the documents which were filed within the time limit set by the Judge. He also told me that the decision is not supported by adequate reasoning.

6. Mr Timson joined with Mr Tan in asking me to set the decision aside and remit this case the First-tier Tribunal.

Analysis

7. It is now a matter of agreement that documents were tendered within the timescale set by the Judge, and those documents were not considered by the Judge. It is not clear whether or not those documents were made

available to the Judge before she wrote her decision, but the result is that procedural unfairness is created. That is a material error of law.

8. The Judge's findings are set out in 22 subparagraphs of [10] of the decision. The Judge considers the immigration rules and then at [10xii)] finds that article 8 is engaged. The proportionality balancing exercise starts at [10(xiii)] of the decision. Between [10(vii)] and [10(x)] the Judge provides inadequate reasons for the conclusion she reaches for central core issues relating to the relationship between the appellant and sponsor and the role played by the appellant's grandparents.

9. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that

(i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision.

(ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

10. The decision is tainted by material errors of law. I set the decision aside. None of the findings of fact can stand. I cannot substitute my own decision because a further fact-finding exercise is necessary.

11. A curious feature of this case is that the application was made under paragraph 297 of the immigration rules. The respondent's decision against which the appellant appeals offers no consideration of paragraph 297. The respondent's decision was made by reference to section E-ECC of appendix FM.

Remittal to First-Tier Tribunal

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

13. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

14. I remit the matter to the First-tier Tribunal sitting at Manchester to be heard before any First-tier Judge other than Judge Brookfield.

Decision

15. The error of

16. I see 2019. 1
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nulgated on 4 September
First-tier Tribunal to be

Signed
January 2020

Date 31

Deputy Upper Tribunal Judge Doyle