



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/11435/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34
On 16 June 2020**

**Decision & Reasons Promulgated
25 June 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

FANNYANN WRIGHT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: O Agbaje of St John Legal (written submissions)

For the Respondent: T Lindsay, Senior Home Office Presenting Officer (written submissions)

DECISION AND REASONS

The appellant is a citizen of Sierra Leone who was born on 13 March 1956. She first entered the United Kingdom on 5 April 2005 with leave valid until 16 March 2007. Thereafter, the appellant made a number of applications for further leave most recently on 6 February 2019 when she applied for leave to remain under Art 8 of the ECHR. On 21 June 2019, the Secretary of State refused that application for leave.

The appellant appealed to the First-tier Tribunal. In a determination sent on 19 September 2019, Judge M A Khan dismissed the appellant's appeal under Art 8 based upon her private and family life.

The appellant sought permission to appeal contending, inter alia, that a number of the judge's findings were irrational; the judge had failed properly to assess her mental health problems; and the judge had failed to make relevant findings on whether the appellant's relationship with her family in the UK (in particular her grandchildren) amounted to family life for the purposes of Art 8.

On 21 February 2020, the First-tier Tribunal (Judge Appleyard) granted the appellant permission to appeal.

In directions dated 20 March 2020 (and set out on 14 April 2020), the Upper Tribunal, in the light of the COVID-19 crisis, indicated a provisional view that the error of law could be decided on the papers without a hearing. Submissions from both parties were invited both on the issue of whether the error of law could be determined without a hearing under Rule 34 and the substance of the error of law issue.

In response to those directions, both parties filed written submissions. Both accepted that the error of law issue could be determined without a hearing. In the light of that, I have concluded that it is just and fair to determine the error of law issue without a hearing under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

In her submissions, the Secretary of State conceded that Judge Khan had materially erred in law in dismissing the appeal under Art 8, in particular in failing to analyse and make a relevant finding whether the appellant had established family life in the UK for the purposes of Art 8 of the ECHR. On behalf of the Secretary of State, it was accepted that the judge's decision should be set aside and no findings be preserved.

In the light of the respondent's concession, which I accept is correctly made, I am satisfied that Judge Khan materially erred in law in dismissing the appeal under Art 8 in that he failed to reach any finding as to whether the appellant, as she claimed, had established family life in the UK. That error was material to his assessment of whether the respondent's decision breached Art 8 of the ECHR.

Decision and Disposal

For the above reasons, I am satisfied that the decision of the First-tier Tribunal involved the making of a material error of law. That decision is set aside.

It is accepted by the Secretary of State, in making her concession that the judge's decision should be set aside, that no findings should be preserved. In her submissions, the appellant does not seek to preserve any findings of fact. It seems to me that the proper disposal of this appeal requires that the decision is made *de novo* at a rehearing of the appeal. The sensible course, given the task of the judge rehearing the appeal, is that no factual findings should be preserved.

Given the extent and nature of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of the

appeal is that it should be remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge M A Khan.

Signed

Andrew Grubb

Judge of the Upper Tribunal
17 June 2020