



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00977/2020**

THE IMMIGRATION ACTS

**Determined Under Rule 34
On 9 November 2020**

**Decision & Reasons Promulgated
On 12 November 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**DK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

This is a paper determination which has not been objected to by the parties. The form of hearing was P (paper determination that is not provisional). A face to face hearing was not held because it was not practicable, and all issues could be determined on paper.

The documents that I was referred to were primarily the application for permission to appeal and the supporting documents, the contents of which I have recorded.

The order made is described at the end of these reasons.

1. This is an appeal against the decision of First-tier Tribunal Judge Khawar promulgated on 24 March 2020 dismissing the appeal of the appellant on the papers. At [6], the judge recorded that the matter was being

considered on the papers at the request of the appellant, and that there had been no objection raised by the respondent.

2. Permission to appeal was sought by the appellant on the basis that she had erroneously selected that she sought a paper hearing, that those representing her had written to the tribunal to withdraw her request for a paper hearing, and that the request to withdraw the erroneous notification had not been put before the judge, who then proceeded on the mistaken basis that the appellant had chosen to have her case determined on the papers.
3. On 10 July 2020, I granted permission to appeal to the Upper Tribunal in the following terms:

“It is strongly arguable that the proceedings in the First-tier Tribunal were procedurally unfair in that the Tribunal was on notice that the appellant had erroneously selected that she wanted a paper hearing and had sought to withdraw that notification. A fax confirmation, email and witness statement has been provided with the renewal application which demonstrates, to a strongly arguable extent, that the FTT had been given the necessary notification from the appellant, and erroneously failed to list the matter for an oral hearing in defiance of those clear instructions, thereby failing to trigger the process by which the appellant would be invited to provide a bundle of supporting materials.

DIRECTIONS

It is my preliminary view that the decision of First-tier Tribunal Judge Khawar did involve the making of an error of law capable of affecting the outcome, and that the decision of the First-tier Tribunal should be set aside, the appropriate course of action being to remit the case to the First-tier Tribunal for a fresh determination on all issues.

Unless within ten working days of the issue of these directions there is any written objection to this course of action, supported by cogent argument, the Upper Tribunal will proceed to determine the appeal without an oral hearing and will remit it to the First-tier Tribunal.

In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed.”

4. The notice within which the above decision, observations and directions was contained was served on the parties on 17 September 2020. Neither party responded to the directions, and neither has objected to the appeal being resolved in the manner proposed.
5. In light of the procedural deficiency outlined above, I consider that it is in the interests of justice, and consistent with the overriding objective, for me to determine this matter on the papers without further ado. For the reasons given when indicating my preliminary view, I consider that the decision of the First-tier Tribunal did involve the making of an error of law such that it must be set aside, on procedural fairness grounds. I set the decision aside and remit the appeal to a different judge of the First-tier Tribunal, with no findings of fact preserved.

6. I maintain the order for anonymity made by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law.

I set the decision aside and remit the appeal to a different judge of the First-tier Tribunal, with no findings of fact preserved.

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 him or any member of their 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.

Signed *Stephen H Smith*

Date 9 November 2020

Upper Tribunal Judge Stephen Smith