



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER
Extempore

Case No: UI-2021-001070

First-tier Tribunal No:
HU/00130/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 29 March 2023**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MMK
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadesham, instructed by Asylum Justice

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 October 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Shergill promulgated on 30 March 2021, in which he dismissed the appellant's appeal against the decision of the Secretary of State made on 12 February 2019 to refuse to grant the appellant leave to remain in the United Kingdom. The appellant had not attended that hearing, nor was she represented at that hearing.
2. The background to the appeals and the procedural history up to that date is set out in detail in Judge Shergill's decision.
3. The appellant's case is that she was deprived of a fair hearing because of the actions of Mr Simmonds, a caseworker at the appellant's representatives, Asylum Justice. In summary, it is said that Mr Simmonds misled his employers and a number of his clients as to whether work was being done. He was aware that there was in this case a requirement to obtain an independent social worker's report. That was not done, and it appears that although he was aware of the hearing on 3 March 2021, he told no one.
4. Again, it appears from the witness statement from the legal director of Asylum Justice, Ms Ruth Brown, that it was only after accessing Mr Simmonds' emails using an IT specialist to that the full picture became apparent. It is also apparent from Ms Brown's statement and the other material including copies of self-reports from Asylum Justice to OISC and an investigation into Mr Simmonds by the Solicitor's Regulatory Authority that steps had clearly had been taken to investigate matters.
5. The appellant was granted permission to appeal by Upper Tribunal Judge Sheridan on the basis that it was argued that owing to Mr Simmonds' actions, the appellant had had no notice of the hearing and accordingly, on that basis, through no fault of the judge, what occurred at the hearing on 3rd March 2021 was unfair, to take objective viewpoint.
6. When the matter came before me Mr McVeety did not resist the submission that an unfair hearing had taken place, but I feel it necessary in the circumstances of this case, which are unusual, to give a slightly fuller decision than I would otherwise have done.
7. I must stress that the unfairness which occurred here was no fault of the judge.
8. I bear in mind that the material, which has now been produced, was not available to the judge. I am however satisfied that the test in Ladd v Marshall is met in this case. As the material discloses, the appellant could not reasonable diligence, have found out what had happened. Second, it is clear to me, that had what had happened become known to the judge, it

clearly would have been material in deciding whether to proceed to determine the appeal in the appellant's absence. Third, there is no reason to doubt credibility of the statements of Ms Brown, or for that matter, the emails relating to the investigations undertaken by the SRA and OISC.

9. Asylum Justice has behaved in an exemplary fashion in how they have investigated this matter once it came to its notice, and in self-reporting to OISC. I make it clear that any findings I made are related solely to the evidence before me and relate solely to the matters before this court and should not be taken as any finding within respect of misconduct for the purposes of any other investigation. That said, it does appear to me on the material provided to me, which as I emphasise is only limited, that Mr Simmonds did act in a way which fell well below the standards acceptable and that he actively misled the client, his employers and the Tribunal.
10. In the circumstances, I am satisfied that there was unfairness occurred in this case, which, unusually was not known to the judge at the time. The effect of that was that the appellant did not receive a fair hearing. Accordingly, although the judge was clearly not at fault in this in this case, the decision must be set aside.
11. I conclude also that the decision should be remitted to the First-tier Tribunal to be heard by a judge other Judge Shergill as that is the only appropriate remedy whereas the appellant has been deprived of a fair hearing.

Addendum

12. Finally, and entirely regrettably, although I gave my decision extempore on 24 October 2022, for reasons which remain unexplained, the recording was not given to the typists to be transcribed until this week. I received the transcript today.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remit the appeal to the First-tier Tribunal to be made afresh; none of the findings of Judge Shergill are preserved.

Signed

Date: 14 February 2023

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul