



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002697
First-tier Tribunal No:
PA/00959/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 September 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

EAW
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decided without a hearing pursuant to rule 34 of the Tribunal
Procedure (Upper Tribunal) Rules 2008

Order Regarding Anonymity

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

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. I have concluded that the error of law stage in these proceedings can be fairly determined without a hearing. My reasons for this are as follows. The appellant lost her appeal before the First-tier Tribunal, but was granted permission to appeal to the Upper Tribunal. Following the grant of permission, dated 12 May 2022, the respondent provided a rule 24 response which conceded that the First-tier Tribunal had erred in law and that its decision should be set aside. The primary error set out in the grounds of appeal and which forms the basis of the respondent's concession was that there had been material procedural unfairness by way of the First-tier Tribunal proceeding to determine the appellant's appeal in her absence.
2. Following the provision of the rule 24 response, the Upper Tribunal issued directions which stated a provisional view that the concession was properly made and that the error of law stage could be determined without the need for a hearing. The respondent confirmed that she was content for the First-tier Tribunal's decision to be set aside and the appeal remitted to the First-tier Tribunal for a complete re-hearing. Although I have not seen any response from the appellant, the only reasonable inference to draw from her challenge is that she did seek remittal. That the appellant had had no fair hearing at all. In light of AEB [2022] EWCA Civ 1512, remittal was always going to be the obvious course of action if there was an error of law.
3. Having read all the relevant materials, I am satisfied that the First-tier Tribunal did erred in law by proceeding to decide the appellant's appeal in her absence, as alleged in the first ground of appeal. The respondent's concession was indeed properly made. It follows that I need not decide the remaining grounds of appeal.
4. Accordingly, the First-tier Tribunal's decision is set aside.

5. It is clear to me that this appeal must be remitted to the First-tier Tribunal for a complete re-hearing, with no preserved findings of fact.

Anonymity

6. This case concerned protection issues and an anonymity direction is justified.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal (Birmingham hearing centre, unless otherwise decided) for a re-hearing before a Judge other than First-tier Tribunal Judge Blackwell.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 18 September 2023