



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/01366/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 October 2017**

**Decision & Reasons  
Promulgated  
On 01 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**  
Appellant

**and**

**CAROL ANNMARIE MILLER  
(ANONYMITY DIRECTION NOT MADE)**  
Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Senior home Office Presenting Officer  
For the Respondent: Mr J Waithe (counsel) instructed by Okafor & Co,  
solicitors

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Majid, promulgated on 11 August 2017 which allowed the Appellant's appeal against the respondent's decision to refuse the appellant's application for leave to remain in the UK.

### Background

3. The Appellant was born on 18 November 1963 and is a national of Jamaica. On 25 February 2016 the Secretary of State refused the Appellant's application for further leave to remain in the UK.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Majid ("the Judge") allowed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 29 August 2017 Judge Holmes gave permission to appeal stating

It is well arguable that the Judge has failed to demonstrate any adequate analysis of the disputed issues and the evidence relevant to them that was placed before him, and, has failed to give adequate reasons for his decision to allow the appeal.

### The hearing

5. Ms Isherwood moved the grounds of appeal. Both parties' representatives then told me that they agree that the Judge's decision contains material errors of law because it does not contain adequate analysis of the evidence, because the decision lacks findings in fact, and because there are inadequate findings in law. On joint motion, I was asked to set the decision aside and remit the case to the First-tier to be determined of new. Parties agree that an entirely new fact-finding exercise is necessary.

### Analysis

6. The Judge's decision is devoid of findings of fact and contains no analysis of the evidence presented. At [18] of the decision, the Judge declares that he finds the appellant to be credible - but does not say why. In that same paragraph the Judge says that he is

"... able to help ..."

the appellant.

7. In the final sentence of the 13 of the decision the Judge says

“... I am happy to give her the benefit of my discretion.”

It is not the Judge’s role to extend help to an appellant. It is not clear (from an holistic reading of the decision) what discretion the Judge is exercising. The Judge does not make any meaningful findings of fact, so that it is not clear how he reached his decision.

8. [16] to [25] of the decision all fall under the heading “the relevant law”, but it is hard to find reference to any law which is relevant to this appeal in any of part [16] to [25].

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. Because the Judge gives no reasons for finding the appellant and her partner to be credible witnesses, and because there is no analysis of the evidence contained in the decision, the decision creates the impression that the evidence for the appellant has not been analysed. The decision contains lengthy reference to irrelevant considerations, and no analysis of the relevant law and immigration rules. I have to, find that the decision is tainted by material errors of law. I must set the decision aside.

11. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 11 August 2017. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

#### Remittal to First-Tier Tribunal

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> 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 this case to the First-tier Tribunal sitting at Taylor House to be heard before any First-tier Judge other than Judge Majid.

**Decision**

**15. The decision of the First-tier Tribunal is tainted by material errors of law.**

**16. I set aside the Judge's decision promulgated on 11 August 2017. The appeal is remitted to the First-tier Tribunal to be determined afresh.**

Signed  
2017

Paul Doyle

Date 30 October

Deputy Upper Tribunal Judge Doyle