



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00544/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 24<sup>th</sup> August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

[M Z]

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Saini (instructed by Vision Solicitors)

For the Respondent: Miss J Isherwood (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

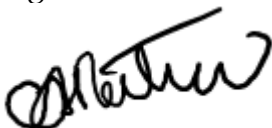
1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of Judge Housego in the First-tier Tribunal promulgated on 26<sup>th</sup> March 2018 after a hearing on 28<sup>th</sup> February 2018.
2. The Appellant is a citizen of Myanmar who came to the UK in 2002 and then had continuous leave as a student up until 2011. Thereafter she made several applications, none of which were granted, ultimately leading to a refusal of further leave to remain on 7<sup>th</sup> December 2016, which was the subject of the appeal before the Judge. The Appellant had chosen not to make an asylum claim but did plead Article 3 as well as Article 8. The Secretary of State, having initially withdrawn the first decision, made a subsequent decision namely the one under appeal which also dealt with Article 3.

3. The Appellant claimed to be at risk on return to Myanmar on the basis of her support for the Venerable Uttara, a Buddhist monk, who on return to Myanmar was arrested and was awaiting trial. She also argued private and family life on the basis of the length of time she had been in the UK, her lack of remaining ties to Myanmar and her relationship with her brother, her only living relative. The Judge was obviously concerned at the hearing about a lack of objective evidence about the situation in Myanmar and was not helped by the absence of a Presenting Officer. The Judge in determining the appeal noted a lack of evidence about any risk to the Appellant. However, he had been told at the hearing by the Appellant's representative that there were witness statements available that would be forthcoming shortly. The representative sought an adjournment for that reason. The Judge declined to adjourn for those statements but did say he would take them into account provided they were received within seven days of the hearing.
4. The grant of permission was made on the basis that the Judge had made a procedural error because the documents which the Judge said were not before him when he wrote the Decision, had in fact been faxed both to the Tribunal and the Presenting Officer's Unit on 6<sup>th</sup> March, within the required period and before the Judge wrote his Decision and Reasons. Unfortunately, the documents don't appear in the court file nor do they appear in the Home Office file, although it would not be the first time that documents faxed after a hearing do not find their way onto the appropriate files at either the Tribunal or the Home Office. It was clearly a procedural error not to take into account evidence that was properly put before the Judge as he had asked, although the Judge cannot be criticised because it was not on the file. However, it was a procedural error and that amounts to an error of law and as it pertains to evidence which the Judge was concerned was absent, it was clearly material to the outcome. Ms Isherwood did not seek to argue otherwise and therefore for that reason I set aside the Decision of the First-tier Tribunal and remit it back to that Tribunal for a full rehearing on all matters.
5. I will maintain the anonymity direction that was made by the First-tier Tribunal.

**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



Upper Tribunal Judge Martin

Date 16<sup>th</sup> August 2018