



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
HU/05884/2018

Appeal Number

THE IMMIGRATION ACTS

Heard at Field House  
On 20<sup>th</sup> May 2019

Decision and Reasons Promulgated  
On 21<sup>st</sup> May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

DAMIAN VELROY HILL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Parkin (Counsel, instructed by Alfred James Solicitors)  
For the Respondent: Mr D Clarke (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. In this decision the term Appellant refers to Damian Hill as he was the Appellant before the First-tier Tribunal and Respondent refers to the Secretary of State although the proceedings in the Upper Tribunal have been brought on the application of the Secretary of State.
2. The Appellant applied for entry clearance as a child of his mother who is present and settled in the UK. The application, which is the last in a number of applications, was refused and the Appellant appealed to the First-tier Tribunal. The appeal was heard over 2 days on the 15<sup>th</sup> of January 2019 and the 5<sup>th</sup> of February 2019 by First-tier Tribunal Judge James at Taylor House. The appeal was allowed for the reasons given in the decision promulgated on the 25<sup>th</sup> of February 2019.
3. The Secretary of State submitted grounds of application for permission to appeal to the Upper Tribunal raising an issue of procedural fairness. The hearing had been adjourned from the 15<sup>th</sup> of January as the Sponsor had not provided any supporting documentation relating to the issue of sole-responsibility, in a decision promulgated in 2017 the Appellant had been found to be living with his father.

4. The complaint raised by the Home Office is that the Judge wrongly informed the Presenting Officer that there was no new documentation for the hearing on the 25<sup>th</sup> of February 2019 which led the Presenting Officer to rely on previous submissions and to leave the hearing to attend to an issue in a separate appeal. Referring to the previous findings about the living arrangements for the Appellant it is argued that the Home Office was denied the opportunity to challenge the evidence that Judge James had relied on in making his decision.
5. The Home Office's position is supported by the attendance note of the Home Office Presenting Officer and by her witness statement of the 17<sup>th</sup> of May 2019 which confirms the train of events.
6. The Appellant opposes the Home Office application. Reliance is placed on the witness statement of Mr A Sijuwade of the 16<sup>th</sup> of May 2019 which states that the case handler received new evidence from the Appellant's High School on the 4<sup>th</sup> of February 2019 and that that was sent to the Home Office on the same day. At the hearing Mr Clarke confirmed that the bundle was on the file that he had.
7. The submissions are set out in the Record of Proceedings, each side maintained their position. For the Appellant it was argued that if there was an error, and that was not conceded, then it was not material as the Home Office had not identified what questions and challenges would have been made to the material that the Appellant had submitted. The Home Office response was that materiality had been raised in the grounds and the findings in the previous decision, whilst not subject to the Devaseelan guidelines were relevant and required exploration.
8. However it came about it is clear that the Home Office Presenting Officer did not have the Appellant's bundle for the hearing on the 25<sup>th</sup> of February 2019 and had she been aware that there was such a bundle I am satisfied that she would not have absented herself from the hearing. The Judge does not appear to have made clear to the Home Office Presenting Officer what evidence was being considered or to have clarified the position with regard to the documentation that was actually available.
9. There is a criticism of the failure of the Home Office to match the bundle submitted with the file but that does not by itself answer the question that arises. It was incumbent on the Judge to ensure that both sets of representatives had access to the evidence that had been submitted and the opportunity to consider that evidence and that does not appear to have been done. The willingness of the Home Office Presenting Officer to leave the room and make no reference to the documentation that the Judge had before them should have indicated that there was a misunderstanding and led to further discussion. In the circumstances I am satisfied that the events were procedurally unfair to the Home Office.
10. With regard to materiality it is not necessary or desirable for someone complaining of procedural irregularity to have to set out the precise nature of the objections that would have been taken or the questions asked. The questions would depend on replies given. In this case the Home Office have indicated the area where concerns would have been raised and objection taken focussing on evidence previously considered which went directly to the living arrangements of the Appellant and so if it could be said that the test for sole responsibility was met. The grounds give sufficient indication of the concerns that arose and which would have been dealt with the Home Office Presenting Officer and I am satisfied that they are material to the decision made.
11. In the circumstances I find that there was procedural irregularity in the conduct of the hearing of the appeal on the 25<sup>th</sup> of February 2019 and that was material to the outcome of the decision. In

the circumstances it is appropriate that the appeal should be remitted for re-hearing with no findings preserved from the First-tier Tribunal decision of the 25<sup>th</sup> of February 2019.

## CONCLUSIONS

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

I set aside the decision, the appeal is remitted to the First-tier Tribunal for re-hearing with no findings preserved, not to be heard by First-tier Tribunal Judge James.

### Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### Fee Award

In setting aside this appeal I make no fee award which remains a matter for the First-tier Tribunal at the conclusion of the remitted hearing.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 20<sup>th</sup> May 2019