



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/25388/2016

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision & Reasons
Promulgated**

On January 8, 2019

On 31 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**DIANA [J]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Forbes

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

DECISION AND REASONS

1. The appellant is a Jamaican national and on October 20, 2001 she was granted leave to enter the United Kingdom until November 18, 2001. The appellant did not leave the United Kingdom at that point but remained and on November 5, 2010 she submitted an application on family and private life grounds. That application was rejected on January 17, 2011 because she had failed to pay the correct fee. A subsequent application submitted on February 10, 2011 was also refused.

2. On November 18, 2014 the appellant gave birth to her daughter and from October 22, 2015 the local authority began supporting the appellant under Section 17 of the Children's Act 1999.
3. On March 10, 2016 the appellant made a human rights application on the basis of her family life with her daughter along with her own private life. This application was refused by the respondent on November 3, 2016.
4. The appellant appealed that decision on November 15, 2016 arguing that refusing her application was a breach of her human rights and the right of the child as the child's father was a British citizen and she was the child's carer and she was therefore entitled to remain in the United Kingdom to look after her child.
5. The case had originally been listed for hearing on July 4, 2017 and a notice of hearing had been sent on May 25, 2017 to the appellant at [~] Moseley Road, Birmingham. On June 21, 2017 the parties were notified that the case had been allocated to a "reserve list" and there was no guarantee that the case would be heard. The appellant attended that hearing and handed to the receptionist a piece of paper with her new address namely [~] Lambert Street West, West Bromwich. The appeal was subsequently adjourned without the need to go into court and notice of that appeal hearing was then sent out on July 6, 2017 to the parties but unfortunately the notice was sent to the appellant's original address.
6. The case was subsequently listed before Judge of the First-tier Tribunal Hawden-Beal on November 28, 2017 and in a decision promulgated on December 8, 2017 the Judge dismissed the appeal noting the appellant had not attended that hearing.
7. The appellant lodged grounds of appeal on January 22, 2018 stating that the reason she had not attended the hearing was because she had not received notice of the amended hearing date and she had only become aware of the decision to dismiss her appeal following the assistance of her social worker. The grounds raise an issue of procedural unfairness.
8. Judge of the First-tier Tribunal Saffer granted permission to appeal finding it arguable the appellant may not have received a fair hearing.
9. No anonymity direction is made.

PRELIMINARY ISSUES

10. The matter came before me on the above date and Mr Mills on behalf of the respondent accepted that there was an issue of procedural unfairness albeit through no fault of the Judge. He accepted that the appellant was entitled to have attended her hearing and there were issues she could have addressed which may have led to a different outcome.
11. Mr Forbes, representing the appellant as a McKenzie friend, relied on the grounds of appeal that had been lodged.

12. Having heard the brief submissions and having had the opportunity of reading the file I accept that there was an issue of procedural unfairness. There is a child involved and there are issues of British citizenship which will need to be dealt with by any future Tribunal. I therefore set aside the decision.
13. I make it clear this error is through no fault of the Judge but due to an administrative error in the non-recording of a changed address.
14. I have considered whether to retain jurisdiction in this matter or to remit this matter back to the First-tier Tribunal. Bearing in mind the appellant did not have a fair hearing it seems appropriate this matter be referred back to the First-tier Tribunal under Section 12(1) of the Tribunals Courts and Enforcement Act 2007.
15. The case should be listed before a Judge other than Judge of the First-tier Tribunal Hawden-Beal.

Notice of Decision

There is an error in law. I set aside the original decision and I remit the matter back to the First-tier Tribunal under Section 12(1) of the Tribunals Courts and Enforcement Act 2007.

Signed

Date January 17, 2019

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis