



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00656/2019

THE IMMIGRATION ACTS

Decided under Rule 34
On 2 July 2020

Decision & Reasons Promulgated
On 22 July 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

JM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal dated 24 September 2019 dismissing her human rights claim. I issued directions on 16 June 2020 having expressed the preliminary view that the matter of whether the First-tier Tribunal erred in law such that its decision fell to be set aside may be determined without a hearing. The Secretary of State has responded to those directions; the appellant's representatives have not. I have decided to proceed to determine this appeal under Rule 34 of the Tribunal (Upper Tribunal) Rules 2008 without having heard from the appellant's representatives because I intend to allow the appeal and return it to the First-tier Tribunal for that Tribunal to remake the decision; it follows that the appellant will not suffer any conceivable detriment as a result of my decision as his appeal has succeeded.

2. In his written submission, Mr Whitwell, Senior Home Office Presenting Officer, writes:

9. At the outset, it is accepted that the FtTJ materially erred in committing a procedural irregularity which was capable of affecting the fairness of the hearing.

10. It is noted there were two previous adjournment applications for the Respondent to disclose the basis of the previous grant of leave dated 24th June 2015.

11. Whilst the Respondent has not had sight to the contents of the FtTJ's record of proceedings in the IAC file, it is noted from the attendance note of Ms A Brown, a HOPO who represented the Respondent before the FtT(IAC) that: -

"Prelims: Rep went through chronology, argued no change as above. I read it differently. At time of grant she was just finished chemotherapy and under a period of close review which is not reflected in current situation. Referred to file minute which was disclosed following last time at Court. It was the combination of cancer and HIV. Now she is said to be discharged from the oncology clinic after "full remission".

Much discussion followed, Rep arguing no change in circumstances but there was a lack of medical evidence to support this. He then wanted to seek an adjournment on basis that Court should have before them the medical letters which were before the decision maker when DL was granted.

He agreed to call I sols to see if they had the same. I looked through all files and saw and copied relevant letters;-

- 4/1/19 from Pam Jennings
- Sols dated 16/11/18
- Respondent letter dated 2/11/18
- NHS W'hampton dated 30/11/17 from 1/6/17 referred to in Instructing sols letter
- 12/7/13 from Dr Latunji
- 8/4/14 from Dr A MacWhannell
- 7/4/14 from Dr Joseph McClean

These are put together as a respondent supp bundle on file.

IJ then refused adjournment request and said hearing could continue. He considered that there was a change in circumstances." [my emphasis]

12. Accordingly, and to this limited extent only, it is accepted that the FtTJ failed to record the adjournment application and his subsequent refusal of such application in the decision."

3. He concludes at [14-16] as follows:

"14. Given the concession above, it is submitted that it is not necessary to consider the Appellant's second ground of appeal at §9-12.

CONCLUSION

15. For these reasons the UT(IAC) is invited to set aside the decision of the FtT(IAC) dated 10th September 2019.

16. The Respondent has not been descriptive as to the disposal other than to say that the matter needs to be reheard *de novo* given the fourth Direction to the Directions of 17th June 2020.”

4. In the light of the position adopted by the Secretary of State and, having considered the decision of the First-tier Tribunal very carefully, I find that agree with the respondent that the decision of the First-tier Tribunal is flawed by legal error for the reasons which she gives. Accordingly, I set aside the decision of the First-tier Tribunal. As the error in this instance touched upon the fairness of the appeal process, I return the appeal to the First-tier Tribunal for a hearing *de novo* and for the decision to be remade.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not First-tier Tribunal Judge French) for that Tribunal to remake the decision following a hearing *de novo*.

Signed

Date 2 July 2020

C. N. Lane

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.