



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/14639/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34 Without a hearing
On 15th September 2020**

**Decision & Reasons Promulgated
On 16th September 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

N.A.B.

(ANONYMITY ORDER MAINTAINED)

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Jamaica. She arrived in the United Kingdom on 8 December 2002 and subsequently had leave to remain until 31 May 2010. On 24 October 2018, she applied for leave to remain on the basis of the family and private life that she had established with her British citizen partner. Her application was refused on 13 August 2019 and she appealed against this decision.
2. Her appeal was allowed by First-tier Tribunal Judge Lemer in a decision promulgated on 5 February 2020. The Respondent applied for permission to appeal and this was granted by First-tier Tribunal Judge Davidge on 26 May 2020.

3. On 3 July 2020 Upper Tribunal Judge Clive Lane made further directions, having come to the view that in the light of the Corona Virus Pandemic, it would be appropriate to determine whether there had been an error of law on the papers. On 9 July 2020, the Secretary of State for the Home Department filed and served written submissions in response to these directions. On 17 August 2020, the Respondent filed and served a Rule 24 Response. In this response, she accepted that First-tier Tribunal Judge Lemer had made a material error of law and submitted that the appeal should be remitted to the First-tier Tribunal for a *de novo* hearing.
4. It was the Respondent's view that the appeal could be determined on the papers. The Respondent did not oppose the error of law hearing being decided on the papers.
5. I have read and taken into account the detailed submissions made by both parties and have taken into account the fact that the error of law made by First-tier Tribunal Judge Lemer led to him not giving full consideration to the Respondent's case outside the Immigration Rules. In these circumstances, I find that there are issues which will need to be explored at an oral hearing but, in the light of the findings of fact that will need to be made, the appropriate venue for such a hearing is the First-tier Tribunal.

ERROR OF LAW DECISION

6. As accepted by both parties, First-tier Tribunal Judge Lemer made a material error of law when he found that the Respondent had a partner for the purposes of Appendix FM to the Immigration Rules. Therefore, the subsequent decision that the Respondent met the requirements of EX.1 of Appendix FM also amounted to an error of law and undermined First-tier Tribunal Judge Lemer's assessment of proportionality for the purposes of Article 8(2) of the European Convention on Human Rights.
7. Therefore, I find that First-tier Tribunal Judge Lemer's decision contained material errors of law.
8. I have also maintained the anonymity order due to the information contained in this case about a child.

DECISION

- (1) The Appellant's appeal is allowed
- (2) First-tier Tribunal Judge Lemer's decision is set aside.
- (3) The appeal is remitted to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judges Lemer or Davidge.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 15 September 2020