



IAC-FH-CK-V1

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

Appeal Number: HU/19510/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 18 November 2020
Extempore**

**Decision & Reasons Promulgated
On 08 December 2020**

Before

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE**

Between

**MS ATITA SENAPITUK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance by or on behalf of the Appellant

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a national of Thailand, born on 30 August 1986. She appeals with permission against the decision of First-tier Tribunal Judge Aziz (“the judge”), promulgated on 24 February 2020, by which he dismissed the Appellant’s appeal against the Respondent’s refusal of her human rights claim. This claim was made in the context of an application for indefinite leave to remain as the partner of a spouse present and settled in the United Kingdom.

By way of brief history, the Appellant arrived in the United Kingdom with entry clearance as a spouse in 2014. She obtained an extension of that leave from

2016 to 2019. On 3 February 2019 she made an application for indefinite leave to remain and this was refused on 1 November of that year. It is this refusal that led to the appeal before the First-tier Tribunal.

The judge proceeded to determine the Appellant's appeal without a hearing. This was notwithstanding the absence of a bundle either from the Appellant or, significantly, from the Respondent. The reason why the latter is of real importance in this case is that the sole bases of refusal of the Appellant's human rights claim were that: first, it was alleged she and her spouse had failed to attend for interview on two separate occasions; second, that the Respondent had apparently been in receipt of a letter from the spouse asserting that the relationship was no longer genuine and subsisting. Therefore, as a simple matter of fact, the judge proceeded without any evidential basis for the assertions made by the Respondent in her decision letter.

Whilst it appeared to be the case that the Appellant herself had not deemed it appropriate to submit very much (if any) evidence herself for the appeal, the very basis of the indefinite leave to remain application was that she was in a genuine and subsisting relationship with her spouse. The judge, having apparently accepted the assertion made by the Appellant that she and her spouse had attended for interview on two occasions but had not in fact been interviewed due to administrative issues, nonetheless concluded that as the burden of proof rested with her, the appeal fell to be dismissed.

The grounds of appeal, drafted by the Appellant herself, asserted that the judge had erred in making the decision without any evidence. Permission was granted by Resident Judge Zucker on 3 August 2020.

The Appellant had been invited to attend the hearing before us, but there was no appearance. We were satisfied that the notice of the hearing had been sent out to her and that she had received it. Indeed, she had made a written request that the matter be dealt with on the papers, but it was deemed appropriate for the hearing to continue in order that we could hear submissions either from the Appellant if she chose to attend) and/or from a Senior Presenting Officer. Having regard to all the circumstances and the overriding requirement to act fairly, we are satisfied that we should proceed with the hearing.

In the event, we heard from Mr Lindsay, who, in his customary manner, took a fair and considered view of this case. He accepted that the judge had materially erred in law.

We agree with that concession. Essentially, the judge materially erred in either one of two respects. First, it was procedurally unfair for him to have decided the case against the Appellant without having even expressly considered the possibility of adjourning the matter in order for relevant evidence to be served, in particular on the Respondent's side. Alternatively, it can be said that the judge erred by finding against the Appellant in the absence of any evidence in support of the only bases of refusal put forward by the Respondent.

Neither error is rendered immaterial by the absence of little, if any, evidence before him from the Appellant, given the nature of her human rights claim. It had been her assertion that there was a genuine and subsisting relationship.

In light of the errors of law identified, we set the judge's decision aside.

In terms of disposal, we are minded to remit this matter back to the First-tier Tribunal, having regard to paragraph 7.2 of the Practice Statement and our primary conclusion that there has been procedural unfairness in this case. The First-tier Tribunal will reconsider the Appellant's case afresh.

Notice of Decision

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

We set aside the decision of the First-tier Tribunal.

We remit the case to the First-tier Tribunal.

No anonymity direction is made.

Directions to the First-tier Tribunal

- 1) This appeal shall be reheard afresh by a judge other than First-tier Tribunal Judge Aziz;
- 2) The First-tier Tribunal shall issue any further case management directions it deems appropriate.

Directions to the parties

- 1) The Respondent shall, **no later than 21 days** after our decision to send out, file with the First-tier Tribunal and serve on the Appellant a bundle of all relevant materials, including all evidence relied on in this appeal;
- 2) The Appellant must tell the First-tier Tribunal **within 28 days** of our decision being sent out to her whether she wishes to continue with her appeal or whether she wishes to withdraw it;
- 3) If the Appellant wishes to continue with her appeal, she must send any evidence she wants to rely on to the First-tier Tribunal and the Respondent as soon as possible, and **no later than 35 days** after our decision is sent out;

Signed H. Norton-Taylor

Date: 26 November 2020

Upper Tribunal Judge Norton-Taylor