



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

Appeal Number: HU/20485/2019

THE IMMIGRATION ACTS

On the papers

On 7 December 2020

**Decision & Reasons
Promulgated**

On 15 December 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**BOUREME TEMBELY
(Anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. On 6 October 2020 First-tier Tribunal Judge Raymond dismissed the appellant's appeal on human rights grounds.
2. Permission to appeal has been granted by another judge of the First-tier Tribunal.
3. The Secretary of State in her Rule 24 reply dated 6 November 2020 confirms she does not oppose the application and invites the Upper Tribunal to determine the appeal by way of remitting the case to the First-tier Tribunal.
4. Having considered the judgment of the High Court in *The Joint Council for The Welfare of Immigrants (Applicant) v The President of the Upper Tribunal (IAC) (Respondent) and The Lord Chancellor (Interested Party)*

[2020] EWHC 3103 (Admin), in which neither the Pilot Practice Direction issued by the Senior President of Tribunals on 19 March 2020 nor Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 were declared unlawful, consideration can still be given to the appropriate venue for the next hearing of this matter in light of the overriding objectives.

5. Paragraph 4 of the Practice Direction reads as follows: “Decisions on the papers without a hearing: Where a Chamber’s procedure rules allow decisions to be made without a hearing, decisions should usually be made in this way, provided this is in accordance with the overriding objective, the parties’ ECHR rights and the Chamber’s procedure rules about notice and consent.”
6. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
7. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
8. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

34.—

- (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
- (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
- (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
- (4) Paragraph (3) does not affect the power of the Upper Tribunal to —
 - (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
 - (b) consent to withdrawal, pursuant to rule 17;
 - (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
 - (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.

9. It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to be determined on the papers as opposed to directing an oral hearing.

Nothing on the facts or in law makes consideration of the issues on the papers not in accordance with overriding objectives at this stage, a breach of the parties' ECHR rights and/or UTIAC's procedure rules about notice and consent.

10. The outcome is, in any event, that sought by the appellant.

Error of law

11. In light of the appellant having established, as accepted by the respondent, that the Judge failed to consider and undertake the assessment of section 55 of the UKBA 2009, to consider section 117B of the Nationality, Immigration Asylum Act 2002, failed to consider the appellant's private life claim, made adverse credibility findings without cogent reasons, and failed to assess the evidence against relevant guidance provided by the Upper Tribunal and Court of Appeal, I find the Judge erred in law in a manner material to the decision to dismiss the appeal and set the decision aside.
12. In light of the fact-finding required and the nature of the flaws revealed in the application for permission to appeal, I find it in the interests of justice and in accordance with the Presidential guidance to remit the appeal to the First-tier Tribunal sitting at Hatton Cross to be heard afresh by a judge other than Judge Raymond.

Decision

13. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at Hatton Cross to be heard afresh by a judge other than Judge Raymond, de novo.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 7 December 2020

