



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

**Appeal Number: PA/09776/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 30 July 2020**

**Decision & Reasons Promulgated  
On 6 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**AIA**

**(ANONYMITY ORDER MAINTAINED)**

**Appellant**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Somalia. She applied for asylum when she arrived in the United Kingdom on 1 July 2016. Her application was refused and her subsequent appeal was dismissed on 20 March 2000. She made further submissions on 31 July 2019 and these were accepted as a fresh claim for asylum, but her application was refused on 18 September 2019. She appealed against this decision and her appeal was dismissed by First-tier Tribunal Judge Oliver in a decision promulgated on 29 January 2020.

2. The Appellant appealed against this decision on the basis that First-tier Tribunal Judge had refused to grant an adjournment when the Appellant was not able to engage with the hearing due to mental health difficulties. It was also submitted that the Judge had not given sufficient anxious scrutiny to the evidence before him. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Martin, sitting as a First-tier Tribunal Judge, on 14 March 2020.
3. As a result of the Covid-19 pandemic, Upper Tribunal Judge Kamara made further directions on 12 May 2020, having come to the view that it would be appropriate to determine whether there had been an error of law on the papers. The Appellant's counsel responded on 26 May 2020, stating that she continued to rely on her grounds of appeal and that it was her view that the appeal should be remitted to the First-tier Tribunal for a re-hearing.
4. On 9 June 2020 the Respondent wrote to the Upper Tribunal and the Appellant's solicitors stating that she considered that First-tier Tribunal Judge Oliver's decision did reveal material error of law and that, in particular, the Judge should have granted the Appellant an adjournment. She also asked the Upper Tribunal to set aside First-tier Tribunal Judge Oliver's decision and remit the appeal to the First-tier Tribunal for a *de novo* hearing. I have extended time for the Respondent to reply to Upper Tribunal Judge Kamara's directions in recognition of the difficulties faced, as a consequence of the current pandemic.
5. Neither party opposed the error of law hearing being heard on the papers, as they were in agreement that the decision had to be set aside and remitted to the First-tier Tribunal. Therefore, and in accordance with the overwhelming objectives of the Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, I have decided that it was in the interests of justice to have a paper error of law hearing.

## **ERROR OF LAW DECISION**

6. I have taken into account the Appellant's grounds of appeal and also Abdi Abby's witness statement, dated 12 February 2020, which clearly suggested that the Appellant was not capable of giving the necessary instructions or participating in her appeal hearing on 2 January 2020. The fact that she had been able to give instructions and appear at a previous appeal was not a relevant consideration when assessing whether a fair hearing could be conducted on that particular day for the purposes of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC).

7. In addition, the manner in which First-tier Tribunal Judge Oliver dealt with the application for an adjournment did not comply with Joint Presidential Guidance Note No. 2 of 2010 *Child, vulnerable and sensitive appellant guidance*. In order to reach a fair decision on the Appellant's appeal he needed to be in possession of expert medical evidence in relation to her mental capacity and the impact that her mental state may have on her entitlement to international protection.
8. Therefore, I find that First-tier Tribunal Judge Oliver's decision contained material errors of law.

## **DECISION**

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

**Nadine Finch**

Signed  
Upper Tribunal Judge Finch

Date 30 July 2020