



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-000151**  
**First-tier Tribunal No:**  
**HU/09347/2018**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**Gini Rogers**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Determined on the papers on 14 June 2023**

**DECISION AND REASONS**

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Hussain promulgated on 14 December 2020. The application was admitted, and permission granted by Upper Tribunal Judge Blundell on 14 March 2022.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a national of South Africa now aged forty-six. She first entered the United Kingdom during 1998 with leave to enter as a working holidaymaker, which was valid until 31 August 2000. The appellant entered the United Kingdom as a visitor during June 2003. She was granted further leave to remain as a

student until 29 March 2004. The appellant has acquired a criminal record in the United Kingdom, the details of which are far from clear from the evidence.

4. The appellant made a human rights' claim on 12 October 2017. The basis of that claim was the appellant's family life with her child, E as well as the appellant's mental health. The Secretary of State refused the application by way of a letter dated 16 July 2020. The principal ground of refusal was suitability, with reference to S-LTR.1.6, in that it was considered that the appellant's presence in the United Kingdom was not conducive to the public good owing to her offending history. Furthermore, the respondent concluded that the appellant did not meet the eligibility relationship requirement, specifically E-LTRPT.2.4, because she had failed to provide evidence that she had direct access to her child. Reference was also made to the appellant's failure to meet the eligibility financial requirement because she was in receipt of public funds and had provided no evidence that she could maintain and accommodate herself with such recourse. Nor was the English language requirement met. Ex.1 (a) did not apply because the appellant had Skype contact with E which could be continued from South Africa. The appellant's length of residence was noted to fall short of the requirements in paragraph 276ADE(1)(iii) of the Rules because at the time of the application the appellant had been living in the United Kingdom for fourteen years. It was not accepted that there would be very serious obstacles to the appellant's integration in South Africa. The appellant's mental state and reference to suffering abuse from her child's father were not considered to amount to exceptional circumstances nor to warrant a grant of leave outside the Rules.

#### The decision of the First-tier Tribunal

5. The appellant did not attend the hearing before the First-tier Tribunal and nor was she represented. The judge found that the appellant could not meet the requirements of the Rules and that her exclusion from the United Kingdom would not result in unjustifiably harsh consequences.

#### The grounds of appeal

6. The grounds are as follows. Firstly, the judge erred in proceeding with the appeal in the absence of papers from the Family Court without considering whether the matter could justly be determined, the judge failed to be guided by *Mohammed* (Family Court proceedings-outcome) [2014] UKUT 419 (IAC) and there was also unfairness in admitting into evidence a determination of the appellant's deportation appeal. Secondly, the judge erred in his approach to the requirements of paragraph EX.1 of Appendix FM in that he referred to provisions which did not appear in the Rules; that as the appellant's immigration history was confused, the judge ought to have adjourned the appeal for the respondent to furnish better particulars and there was a failure to consider whether the appellant could show ten years continuous lawful residence. Thirdly, the judge erred in his approach to article 8 outside the Rules including a failure to assess whether the appellant has a family life with her son.
7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.
  7. I do consider there to be plain merit in the first and third grounds. Given that a Designated Judge had already deemed it necessary (seemingly of his own volition) to invoke the Protocol on Communication between the IAC and the Family Court, it is plainly arguable that the judge acted unfairly in failing to

consider whether the appeal could be justly determined without the response from the Family Court.

8. I am less impressed by the point taken about the earlier decision in the appellant's deportation appeal, which does not seem to have influenced the judge's assessment one way or the other. Nor do I consider the second ground to be particularly strong, given the appellant's lack of direct contact with her son. Nevertheless, given the judge's failure to consider whether he could justly proceed with the hearing in the absence of a response from the Family Court, I consider the grounds of appeal to erect at least one argument which appears to have prima facie merit, even on a cursory consideration of the papers.

8. The respondent filed a Rule 24 response, out of time, on 14 June 2023, in which it was stated that the respondent did not oppose the appellant's application for the following reasons:

3. '...she accepts that the Judge failed to consider whether they could justly proceed with the hearing in the absence of a response and/or papers from the Family Court, consequent to the Designated Judge having invoked the Protocol on Communication between the IAC and Family Court. *RS* (immigration and family court proceedings) India [2012] UKUT 00218 (IAC) and *Mohammed* (Family Court proceedings-outcome) [2014] UKUT 00419 (IAC).

4. Accordingly, the respondent proposes that the Tribunal remit the appeal to the First-tier Tribunal to be considered de novo. (*AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).'

#### Decision on error of law

9. The agreed position of the parties, that the decision of the First-tier Tribunal involved the making of material errors of law is accepted without hesitation by the Upper Tribunal for all the reasons set out in the grounds. Accordingly, the appeal is remitted to the First-tier Tribunal for a de novo hearing.

#### **Decision**

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

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Hussain.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 June 202**