



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002324

First-tier Tribunal No: HU/04683/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 19 July 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ARZU ELVIRIR KURU
(NO ANONYMITY ORDER MADE)**

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Kuru, Sponsor

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 28 June 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision First-tier Tribunal Judge Hands ('the Judge'), promulgated on 19 February 2022, in which the Judge dismissed the appellant's appeal against the decision of an Entry Clearance Officer (ECO) who refused the appellant's application for leave to enter the United Kingdom as a partner of a person present and settled in the UK, under Appendix FM.
2. The Judge was asked to deal with the matter on the papers. The Judge noted no issue was taken in relation to the refusal of the application under the Immigration Rules and that the issue is whether the decision is proportionate pursuant to Article 8 ECHR based upon family life considerations.
3. At [18] the Judge records being unable to find any of the documents referred to by the appellant in the grounds of appeal in connection with her health, the autistic spectrum disorder diagnosis of her 12-year-old son in the United Kingdom, evidence in respect of her two older sons continuous residence in the UK over the last 9 ½ years, or of her youngest son's enrolment in school in the UK. That led the Judge to find there was insufficient reliable evidence to demonstrate the family would suffer unjustly harsh consequences as a result of the refusal or a disproportionate breach of Article 8 ECHR.

4. The appellant sought permission to appeal on the basis the documents had been sent to the First-tier Tribunal on 3 October 2022, with the correct reference, to the nominated email address. It is said that a message "SubmitComplete" was received at the end of the filing of the evidence and that the appellant was surprised by the Judge's comments.
5. It is not disputed before me that the evidence was filed as indicated or that the material had not been brought to the Judge's attention. As the appellant was entitled to have all the evidence filed properly considered by the Judge, and that the absence of such evidence is clearly material to the Judge's decision to dismiss the appeal, I find through no fault of the Judge that there has been an error of law material to the decision to dismiss the appeal.
6. I find it appropriate for the appeal to be remitted to the First-tier Tribunal sitting at Newcastle to be heard afresh, as a face-to-face hearing to be attended by Mr Kuru, who will be able to assist the assigned judge with any questions that may arise from the evidence.
7. Mr Kuru came to the Upper Tribunal with his children and was concerned about any further delay and the impact upon the children of their mother not being able to join them. He was advised to write a letter to the First-tier Tribunal setting out his case in relation to seeking an expedited hearing. Mr McVeety raised the issue of whether a further fee would need to be paid for a face-to-face hearing which Mr Kuru indicated he was willing to pay, if so advised.

Notice of Decision

8. Through no fault of the Judge I find the First-tier Tribunal has erred in law in a manner material to the decision to dismiss the appeal. I set that decision aside with no preserved findings. The appeal shall be remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Hands.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 June 2023