



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

**Case No: UI-2022-002888**  
**First-tier Tribunal No:**  
**HU/02443/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**NASREEN KHANAM**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Chohan, solicitor.

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**Heard at 50 Melville Street Edinburgh on 25 October 2023**

**DECISION AND REASONS**

1. The appellant is an elderly widow. She does not speak English, has mental health and mobility problems. On 28 February 2022, she travelled to her appeal hearing in Glasgow from Monifeith with her family who were to give evidence on her behalf; Although she was not to give evidence, she was excluded from that hearing because she uses a wheelchair; the hearing proceeded in her absence. The judge dismissed her appeal. She appeals against that decision on the grounds that the hearing was unfair. I agree, for the reasons set out below.
2. The appellant sought leave to remain in the United Kingdom on human rights grounds in May 2020, having arrived as a visitor in 2019, to stay

with her daughter and family. That application was refused on 18 March 2021. She appealed against that decision to the First-tier Tribunal which then listed the hearing.

3. On the day of the hearing, the appellant was driven to Glasgow. She was able to enter the hearing centre but, although she was able to use a lift to reach the correct floor, she was told that she could not access the hearing room. It appears from what Mr Chohan said, that this was because the room was small, and contained a large amount of AV equipment which prevented a wheelchair from being used.
4. It appears from the unchallenged evidence of Mr Chohan that it was a court clerk who relayed the information, and also that the number in the room would be too large given COVID restrictions. The clerk also explained that the judge did not want the appellant in the room as she was not giving evidence. The appeal proceeded with the appellant sitting in the reception area in her wheelchair.
5. The judge heard evidence from the appellant's son-in-law and daughter as well as submissions from both representatives. He dismissed the appeal, finding that:
  - (i) the appellant did not meet the requirements of paragraph 276 ADE(1)(vi) [36];
  - (ii) there was no family life between the appellant and her son-in-law/daughter [37], nor was family life engaged;
  - (iii) in any event, removal was proportionate.
6. The appellant sought permission to appeal on three grounds:
  - (i) There had been a procedural irregularity in excluding the appellant from the hearing room
  - (ii) The approach to the psychiatric report on the appellant was irrational;
  - (iii) The conclusion with respect to paragraph 276 ADE(1) was irrational.
7. Permission to appeal on grounds (i) and (ii) was granted on 12 May 2022.
8. The respondent sought to justify the decision in her rule 24 response, an approach not taken at the hearing.
9. The grounds of appeal, while identifying the exclusion of the appellant from the hearing as a procedural irregularity, do so primarily on the basis that this affected the judge's assessment of the appellant's state of health. That is misconceived as a judge could not properly do so. That said, the mere fact of excluding an appellant from a hearing without proper cause is sufficient reason to conclude that justice was not seen to be done. This should not have happened. On that basis alone the appeal must be allowed and the decision of the FtT set aside.

10. Further, and while it did not form part of the grounds, it is of concern that the judge, as he admitted, started the hearing with an observation that he suspected the appellant's motives. He stated [26]:

I am struck by the possibility this is an attempt to circumvent immigration control with the appellant gaining entry as a visitor and then wanting to remain permanently with her daughter. Having confessed this suspicion from the outset I have sought to keep an open mind as I am obliged to do and address the evidence. I would stress that I have not reached a conclusion until I have considered all of the evidence and notwithstanding my opening comment, I have not prejudged the appeal.

11. It was explained by Mr Chohan, and accepted by Mr Diwnycz, that the judge did in fact make these observations at the outset of the hearing. Had apparent bias been a ground of appeal it would have been difficult to conclude that the test was met. While a judge may give an indication at the start of a hearing as to areas of concern, that should not extend to him stating a starting point that, in effect, the appellant and/or the witnesses were not telling the truth.

12. It is unnecessary, in the circumstances, for me to consider ground 2, although I would have found it made out. The first basis for not attaching weight to the report - that it had been commissioned by the appellant's solicitors - is irrational. Further, had the judge enquired, it would have been apparent that the expert spoke Urdu, the language in which the appellant was examined. His criticism of the report on the basis that he did not know is thus misplaced.

13. Given that there was not a fair hearing, I am satisfied that it is appropriate to remit the appeal to the First-tier Tribunal for it to be remade.

14. In the circumstances of this appeal, it may be sensible to have a case management review to decide, amongst other matters, whether it would be better for it to proceed online or on a hybrid basis.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. The appeal will be remade in the Upper Tribunal. None of the findings made by the First-tier Tribunal are preserved.

Signed

Date: 21 November 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal