



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

2022-006610

No: UI-

**First-tier Tribunal No:
PA/52493/2020**

IA/02335/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 12 October 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZG

Respondent

Representation:

For the Appellant: Mr E Tufan (Senior Home Office Presenting Officer)

For the Respondent: In person

Heard at Field House on 19th September 2023.

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, ZG the appellant before the First-tier Tribunal and the Respondent to this appeal is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. To avoid confusion “The Appellant” refers to ZG, the Appellant before the First-tier Tribunal and “the Respondent” to the Secretary of State although this is the Secretary of State’s application. The Appellant was born on the 23rd of December 1987, she is a citizen of Ethiopia. Her immigration history is set out in the first paragraph of the decision of Judge Hussain

promulgated on the 2nd of July 2022. The appeal followed the refusal of her asylum claim by the Respondent. The Judge rejected the Appellant's asylum claim, that part of the decision has not been challenged.

2. The appeal to the Upper Tribunal is on the application of the Respondent. Permission was granted by Judge Sills on the 21st of July 2022. The Respondent's application focussed on the Judge's decision to allow the Appellant's appeal on the basis that she is in a new relationship and that she has had children who are British Citizens.
3. The complaint is that the Appellant's relationship and the birth of their children are new matters which had not been considered by the Respondent in the context of the Appellant's application. The Respondent's complaint is that the Judge erred in law in failing to grant the Respondent an adjournment for the matters to be considered and should not have considered them himself without the consent of the Respondent and that had not been given. It was on that basis that Judge Sills found that there was an arguable error and granted permission to appeal the decision to the Upper Tribunal.
4. At the hearing on the 19th of September 2023 at Field House the Appellant attended unrepresented but with her husband. The Appellant had wished for the hearing to proceed with her husband assisting her in the absence of an interpreter. It was explained that this was not appropriate and the hearing put back to the afternoon by which time an interpreter had been obtained who attended the hearing remotely.
5. At the start of the hearing I confirmed that the Appellant and the interpreter understood each other, the hearing was recorded. Mr Tufan for the Respondent relied on the grounds but did not expand on them much given the nature of the situation which is discussed below. The Appellant explained that her legal representatives had stopped acting after the appeal had been decided and had told her to find another lawyer.
6. The main case on whether a matter is a new matter is Mahmood (Section 85 Nationality, Immigration and Asylum Act 2002 - "new matters") [2017] UKUT 488 (IAC). From that decision something relied on by an Appellant at an appeal hearing is a new matter if it is a factual matrix which has not previously considered by the Secretary of State and is factually distinct. The birth of a child would almost always amount to a new matter.
7. If a new matter arises then if the Secretary of State's representative requests an adjournment the guidance is that such a request should be granted. The guidance is given in the case of Quaidoo (new matter: procedure/fairness)[2018] UKUT 87 (IAC).
8. The Appellant had not raised the fact of her new relationship or her having had a child in any documentation before the decision was made and so when raised for the purposes of the hearing of the Appellant's appeal these were new matters within the meaning of section 82. In those circumstances Judge Hussain could only have dealt with them in the decision if the Secretary of State's representative had given permission for him to do so.
9. The Home Office have provided evidence that shows that an application had been made for an adjournment and that consent had not been given for

the Appellant's relationship or child to be considered. These matters were not addressed or even referred to by Judge Hussain and it is not clear why the adjournment request was not considered or granted or why the Judge felt able to deal with the new matters.

10. I note that the hearing took place on the 29th of March 2022 but the decision of Judge Hussain was not completed until the 2nd of July 2022. Ordinarily decisions are to be promulgated within 2 weeks of the hearing and it is not clear why the decision in this appeal was delayed by over 10 weeks. The impression is that the Judge overlooked the events at the decision in addition to having rejected an application to adjourn at the hearing itself and then did not explain the approach in the decision.
11. Applying the guidance to the circumstances and facts of this appeal I find that the Judge did err in failing to adjourn the appeal and in deciding the new matters that the Appellant had raised. As there is no challenge to the Judge's findings on the Appellant's asylum claim those findings remain in place and will not be revisited. The decision is set aside to the limited extent that it deals with the Appellant's family life and article 8, these findings are set out in paragraphs 46 to 52 of the decision and I repeat expressly are set aside.
12. At the hearing in the Upper Tribunal there was a discussion about the best way to proceed in the circumstances. Since the First-tier Tribunal hearing the Appellant has had a third child with her partner and this child too is a British Citizen. Mr Tufan consented for all new matters, including all 3 children, to be decided by the First-tier Tribunal with the case being remitted to the First-tier Tribunal for a new decision that deals with the Appellant's family life and article 8.
13. The Appellant requested that the case is remitted to the hearing centre at Nottingham as that is more convenient for where they live, that was agreed by Mr Tufan. The Appellant was advised to obtain legal representation if at all possible and to serve all the evidence and information that she wishes to rely on for the next hearing.
14. Further evidence should be served by the Appellant on the Home Office and the Tribunal by the 31st of October 2023. The Respondent will need time to consider the evidence submitted and so the Appellant's appeal will be heard after the 1st of January 2024. The case is transferred to Nottingham. This appeal should not be before Judge Hussain.

Notice of Decision

15. The decision of Judge Hussain of the 2nd of July 2022 contained a material error of law with regard to the Appellant's family life and article 8, the findings on that part of the Appellant's case are set aside. The appeal is remitted to the First-tier Tribunal for that aspect of the Appellant's appeal to be considered afresh with no findings preserved.

Judge Parkes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
9th October