



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

Case No: UI-2023-005429
First-tier Tribunal No: EA/09728/2022

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2024**

Decision & Reasons Promulgated

29th January 2024

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

**SALMA AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms U Dirie, instructed by WS Legal

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. Ms Salma Ahmad appeals, with permission granted by First-tier Tribunal Judge Pickering, against the decision and reasons of First-tier Tribunal Judge Mulholland, that was issued on 5 July 2023.
2. At the outset of the hearing, Mr Walker confirmed there was no evidence on the Home Office file that notice of hearing was issued for the hearing. He informed me that the Respondent conceded that there was procedural error that resulted in unfairness because neither party was properly notified of the hearing. He invited me to set aside the decision and remit the appeal to the First-tier Tribunal for a fresh hearing before a different judge. Mrs Dirie agreed.

3. Although there is no need to say more, I make the following observations in the hope that such procedural errors are avoided in future.
4. There was no challenge to the assertion that neither the Appellant, her sponsoring daughter, Ms Iman Fettayleh, or the instructed solicitors were sent notice of the hearing that was to take place on 13 June 2023. The Appellant's solicitors only found out about the hearing on 9 June 2023 when they received an email with joining instructions for a CVP hearing. Of course, such an email cannot be equated to being a notice of hearing.
5. This was a matter that could and perhaps should have been checked by Judge Mulholland before issuing her decision, particularly as no Presenting Officer attended. I recall that rule 26 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 requires that:

The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

6. The failure of the Tribunal to comply with rule 26 means the hearing was defective. The documents provided by the Appellant's solicitors adequately establish that they acted diligently in bringing the procedural error to the attention of the Tribunal before the hearing and made further representations before the decision was promulgated. The need for the matter to be considered by the Upper Tribunal could have been avoided had Judge Mulholland investigated, which would not have been onerous and would have avoided the procedural unfairness and subsequent delay.
7. I add that it is evident that Judge Mulholland or another judge had sight of the correspondence before the decision and reasons was promulgated because there was a response. The response does not deal with the procedural error caused by the Tribunal and instead asserts that the solicitors should have attended the hearing to apply in person for an adjournment, there having been no response to the request to adjourn submitted on 12 June 2023. I do not find this is an answer to the fundamental issue that the Tribunal did not notify a party of the hearing.
8. Although it may have been possible for the solicitors to attend the hearing to apply for an adjournment, that would have put the Appellant and her sponsor to additional cost, which could not be recouped. It is understandable, therefore, that the solicitors acted as they did, assuming that the procedural error would have been identified.
9. Even if it was not unfair for Judge Mulholland to proceed to hear the appeal in absence of knowing the procedural error at the time, such ignorance had been displaced by the Appellant's correspondence before the end of the hearing day and before the decision was issued. As a result of the procedural error, the Appellant and her sponsor were disadvantaged because they could not prepare or present their case effectively. This is

evident in the second ground of appeal, which highlights a factual error regarding the relationship between the Appellant and sponsor.

10. It follows that the procedural error had an adverse effect on fairness and justice, meaning it is necessary to set aside Judge Mulholland's decision and all the findings she made, and to remit the appeal to be heard afresh in the First-tier Tribunal by a different judge.

Notice of Decision

The decision issued on 5 July 2023 contains legal error and is set aside.

The appeal is remitted to be decided afresh in the First-tier Tribunal by a Judge other than Judge Mulholland.

Judge John McCarthy

Deputy Judge of the Upper Tribunal

Date: [to be inserted by Admin]