First-tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06114/2012

THE IMMIGRATION ACTS

Determined On the Papers at Field House	**Determination Promulgated**
On 1st July 2013	**On 2nd July 2013**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MS AYSEL ZUREL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Turkey, born on the 6th June 1987, appeals with permission against the decision of the First-tier Tribunal (Judge Pedro), who dismissed the Appellant's appeal against the decision of the Respondent made on the 22nd February July 2012 to refuse her entry clearance to the United Kingdom.

2. The Appellant made an application for entry clearance for settlement with her fiancé, the sponsor, under Paragraph 352AA of the Immigration Rules HC 395(as amended). The sponsor is a recognised refugee, having been granted status on the 18th August 2010.

3. In a determination promulgated on 28th September 2012, the First-tier Tribunal (Judge Pedro) dismissed the appeal under the Immigration Rules and on human rights grounds.

4. The Appellant sought permission to appeal that decision. In the grounds for permission, it stated that it had been conceded in the appeal that the Appellant could not succeed under Paragraph 352AA of the Rules nor could she succeed under paragraph 290 as the sponsor was not settled in the UK as he only had limited leave to remain but that all the other requirements could be met, including adequate accommodation and maintenance, (see grounds for permissions at paragraph 2). However, it was submitted that the appeal therefore proceeded on Article 8 grounds with reference to the decision of Aswatte (fiancé of refugees (Sri Lanka) [2011] UKUT 00476. No issue had been taken by either the ECO or the Presenting Officer at the hearing with regard to the sponsor's ability to maintain or accommodate the Appellant. However, in dismissing the appeal, the judge was not satisfied that the Appellant was able to meet the maintenance requirement of paragraph 290. Thus it was submitted that the decision of the FtT was in error by failing to put the sponsor or the representative on notice that this was an issue as the same had not been raised by the ECO or the Presenting Officer and that is was a matter of procedural unfairness. Thus the grounds raised the issues of whether the judger should have reached the decision on a material issue without giving the Appellant, through her sponsor and representative, the opportunity to deal with at issue.

5. On 6th November 2012 permission to appeal was granted by the First –tier Tribunal (Judge Sharp).

6. The notice of decision for permission to appeal was served upon the parties and in addition directions were served to the filing of further evidence in respect of this appeal. At paragraph 4 of those directions, the parties were on notice that the Upper Tribunal would consider all documentation received by it in response to the directions before deciding whether or not it is necessary to have an oral hearing. In respect of those directions, a response to the Grounds of Appeal under Rule 24 was received on behalf of the Secretary of State. In that response at paragraph 2 it is stated that the Respondent did not oppose the Appellant's application for permission to appeal and invited the Tribunal to "determine the appeal with a fresh oral hearing (continuance) hearing to consider whether the Appellant is entitled to entry clearance under Article 8. This is because maintenance was taken as an important issue in the assessment and according to Judge Sharp who has granted permissions there is no evidence on the record of proceedings that the sponsor was ever given an opportunity to address this matter which clearly concerned the judge. "

7. In the light of the content of the grounds for permission to appeal which is based on a procedural irregularity which gave rise to unfairness and the response to the Grounds of Appeal under Rule 24 in which it is conceded that the determination discloses an error of law, both parties appeared to agree in effect that the decision of the First-tier Tribunal could not stand.

8. On the 13th January 2013, the Upper Tribunal issued directions in the following terms:

> "In the light of the issues raised in the grounds, the grant of permission and the response from the respondent in which the application for permissions is not opposed, it is my provisional view that the decision of the First tier Tribunal discloses an error of law in that there had been a procedural irregularity before the FTT and that the proper course would be to set aside the decision and remit this appeal to be heard by the First Tier Tribunal in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act and Paragraph 7(2) of Practice Statement of 10th February 2010(as amended).
>
> DIRECTIONS:
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> Any submissions to the contrary are to be filed no later than 14 days after the date on which this direction is sent out."

9. No further submissions were filed in respect of those directions. It is not clear why there has been a delay since those directions were sent out. I have now been asked to give further directions for the appeal. I consider it appropriate to decide whether an error of law has been established without a hearing under Rule 34(1) of the Upper Tribunal Procedure Rules. For the reasons given in the grant of permission (read with the grounds) and the response received from the Respondent, I conclude that the First tier Tribunal has made an error of law. In those circumstances, the appropriate course is for the decision of the First-tier Tribunal to be set aside. The Respondent invites the Tribunal to determine the appeal with a fresh oral hearing. In that context, I am satisfied that the appropriate course is for the appeal to be remitted to the First-tier Tribunal for there to be an assessment for the evidence. Whilst it is not the ordinary practice of the Tribunal to remit cases to the First-tier Tribunal, there are reasons why in this case such a course should be adopted, having given particular regard to the overriding objective of the efficient disposal of appeals and that there are issues of fact that are central to this appeal that require determination which have not been taken into account or assessed due to a procedural irregularity that occurred with the case before the First-tier Tribunal. In that sense the case falls within the practice statement of paragraph 7.2(a) and (b) (as amended).

10. Therefore the decision of the First-tier Tribunal is set aside and the case is to be remitted to the First-tier Tribunal at Hatton Cross for a hearing in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act at paragraph 7.2 of the practice statement of 10th February 2010 (as amended).

Decision

The decision of the Immigration Judge is to be set aside and remitted to the First-tier Tribunal for a hearing in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act and practice statement of 10th February 2010 (as amended).

Signed Date: 1st July 2013.

Upper Tribunal Judge Reeds