



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/02400/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 February 2014

Determination Promulgated  
On 7 March 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS AMNA BIBI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Bellara, Counsel, instructed by Veja & Co Solicitors  
For the Respondent: Miss A Everett, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of Pakistan, seeking settlement to join her husband, the sponsor, who is a British citizen.
2. Her application was refused on 5 December 2012 and the appellant sought to appeal to the First-tier Tribunal. Her appeal came before First-tier Tribunal Judge Thanki on 4 October 2013. The sponsor was not in attendance at that time. The appeal was

dismissed. The grounds of appeal contend that the hearing was unfair because there had been no notification neither to the appellant or to the sponsor as to that hearing.

3. Initially a notice of hearing had been sent to both the sponsor and the appellant on 21 August 2013 notifying them that the hearing date would be 8 April 2014. However on 16 September 2013 notification was sent to the appellant that the hearing had been adjourned and would now be heard on 4 October 2013. In effect therefore, bringing forward the hearing. Not only was the hearing brought forward but the notification period was unduly short particularly to somebody who lived in Pakistan. It is expected that there would be 28 days of notice.
4. It is fully understandable therefore that neither the appellant nor the sponsor would have received the notice in time and that contention was readily accepted by Miss Everett, who represents the respondent at the appeal hearing before me.
5. It is clear, therefore, that there has been a procedural error such as to affect the fundamental fairness of the proceedings. In those circumstances I have no hesitation in setting aside the decision and directing that the appeal be reheard by the First-tier Tribunal.
6. I stressed, however, to the sponsor, who attended at the hearing before me, that he needed to meet the concerns as expressed by the ECO in the original refusal decision, namely that the appellant should provide her English language test certificate and that he should provide confirmation of his employment and income. Clearly those matters needed to be addressed at any subsequent hearing in order to satisfy the Immigration Rules. Additionally he would need to address the concerns as expressed in the determination as to why the continuing separation is such as to amount to a breach of Article 8 of the ECHR.

### **Directions**

- (1) The decision shall be set aside to be remade by the First-tier Tribunal.
- (2) Any further evidence relating to the issues in the case should be served no later than 7 days prior to the date of the hearing, which is scheduled for 12 May 2014.
- (3) Any further directions that are required to be issued by the First-tier Tribunal.

Signed

Date 05.03.2014

Upper Tribunal Judge King TD