



Judge K. S. H. Miller at a hearing on 3 October 2014 whereby the appeal was dismissed under the Immigration Rules and also on human rights grounds.

2. Permission to appeal was granted by a Judge of the First-tier Tribunal on a point that in fact turns out to be irrelevant for present purposes although the issue may arise subsequently for consideration.
3. In the determination it is recorded that the sponsor, Mr Jainul Razeek, gave evidence. At paragraph 8 of the determination Judge Miller said that the sponsor gave his evidence in English and went on to state as follows:

“an interpreter had been booked but was not available at the time the case was called on. I advised that if there was any difficulty in answering any question, he should say so. He proceeded to give his evidence without any apparent problems.”

4. It is now contended in a ground that requires permission to be relied on by way of amendment to the grounds advanced before the Upper Tribunal, that there is procedural error in that part of the judge's decision. I say that the grounds require amendment because no complaint about the lack of interpreter appears to have been raised in the grounds seeking permission to appeal to the Upper Tribunal. Indeed, it does not appear from the determination, nor from what I can see in the judge's manuscript record of proceedings, that the sponsor had any apparent difficulty giving evidence.
5. However, Mr Avery quite candidly and very fairly told me that the Presenting Officer's notes of the hearing suggest that the sponsor was not in fact entirely competent in answering the questions that he was asked at the hearing, without an interpreter. As I have said, there was no interpreter. It seems that a Tamil interpreter had been requested.
6. In the light of the helpful and candid disclosure by Mr Avery, which supports the propositions advanced on behalf of the appellant, I allowed that amendment to be made.
7. So the question then is what effect could it be said that that apparent difficulty with interpretation may have had on the outcome of the proceedings. One of the issues in the appeal, and perhaps the main issue, is the question of 'sole responsibility', although the question of 'serious and compelling family or other considerations' also potentially arises.
8. It is not the appropriate for me at this stage to explore the extent to which the issue of sole responsibility was put before the First-tier Tribunal. It is sufficient, I think, to say that the matter is at least advanced in witness statements from the appellant and from the sponsor's wife.

9. I cannot be confident that all issues were properly and fairly canvassed before the First-tier Tribunal in the light of what I have been told about the issue of interpretation.
10. It seems to me that in these circumstances it has been established that the First-tier Tribunal erred in law, in what could be characterised as an error in procedure affecting the fairness of the proceedings, and that that error of law requires the decision to be set aside. Mr Avery did not dissent from that proposition and indeed supported it.
11. In those circumstances, the decision of the First-tier Tribunal having been set aside and in the light of the reasons for it having been set aside, the appropriate course is for the matter to be remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge K. S. H. Miller. No findings of fact are preserved, except as agreed between the parties, and where those findings are not infected by the error of law.
12. My decision and reasons makes no assessment of the merits of the appeal, either on the facts or in terms of the legal arguments that were, initially at least, advanced before the Upper Tribunal.

*Decision*

13. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge K. S. H. Miller.

Upper Tribunal Judge Kopieczek

13/03/15