



IAC-FH-NL-V1

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

Appeal Number: HU/03256/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 February 2016**

**Decision &
Promulgated
On 15 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MRS HANAA ALBALILI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, ISTANBUL

Respondent

Representation:

For the Appellant: Mr A Moran, Legal Representative

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge J S Law (the judge), promulgated on 28 November 2015, in which he dismissed the appeal. The appeal to the First-tier Tribunal had been against a refusal of entry clearance dated 15 July 2015. The application for entry clearance had been based upon the family reunion provisions of

the Immigration Rules, namely paragraph 352A (the sponsor is a refugee in this country).

2. The judge dealt with the appeal under Rule 19 of the First-tier Tribunal's Procedure Rules 2014. This provides that the Tribunal may decide an appeal without a hearing if:
"a party has failed to comply with a provision of these Rules or a direction of the Tribunal and the Tribunal is satisfied that in all the circumstances including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing."
3. The judge proceeded on the basis that the Appellant had failed to submit grounds of appeal. He was of the view that no explanation had been provided for the failure. He therefore exercised his power to decide the appeal without a hearing. Having done so he then concluded that the Appellant had failed to make out her case in respect of the Respondent's decision under the Rules and therefore the appeal failed.
4. The Appellant appealed the judge's decision on the basis that in fact grounds of appeal had been lodged together with the notice of appeal. Permission to appeal was granted by First-tier Tribunal Judge Page on 21 January 2016.

The hearing before me

5. Having considered the relevant papers Mr Whitwell took the very fair and sensible view that grounds of appeal had in fact been sent in with the notice of appeal and that therefore the judge was wrong to have dealt with the appeal on the basis that he did. Mr Whitwell agreed that the only proper means of disposal was to remit this appeal to the First-tier Tribunal for a complete re-hearing.

Decision on error of law

6. It is clear to me that the Appellant did in fact lodge grounds of appeal together with the notice of appeal. I have in the papers before me a copy of the notice of appeal dated 11 August 2015. Attached to this notice of appeal are the grounds of appeal. Both documents have at the top of their respective pages the same transmission date, that being 11 August 2015, together with the fax number of the Appellant's legal representative.
7. Further, in a prompt response to a request from the First-tier Tribunal, it is also clear that the Appellant's legal representative then re-submitted the grounds of appeal. Evidence of this is contained in the legal representative's email to the First-tier Tribunal dated 8 September 2015. For some reason the judge was unaware of the fact that the grounds of appeal had been lodged (and then 're-lodged') when he made his decision on 24 November 2015. That is unfortunate.

8. It is quite obvious that there was a procedural irregularity in the determination of this appeal. It is also clear that the error was material and therefore I set aside the judge's decision.

Disposal

9. This appeal clearly needs to be remitted to the First-tier Tribunal. The effect of the judge's error has been the Appellant has not had any hearing at all.
10. Therefore I remit the appeal to the First-tier Tribunal for a complete re-hearing and I issue relevant directions below.
11. I was informed by Mr Moran that the Appellant is now pregnant and due to give birth in the fairly near future. We have endeavoured to fix a date for the remitted hearing as soon as possible. It must of course be borne in mind that the appeal will only be able to deal with the factual situation as it pertained to the date of the Respondent's decision.

Anonymity

12. No direction has been made thus far, and none has been sought from me. I make no direction.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

No anonymity direction is made.

Directions to the parties

- 1. The Appellant shall file and serve on the First-tier Tribunal and Respondent and further evidence relied upon no later than 21 days prior to the next hearing;**
- 2. Both parties shall comply with any further directions issued by the First-tier Tribunal.**

Directions to Administration

- 1. This appeal is remitted to the Taylor House hearing centre, to be heard afresh on 10 June 2016, not before First-tier Tribunal Judge J Law;**
- 2. An Arabic interpreter is required;**
- 3. There is a 1 hour time estimate.**

Signed

Date: 4 March 2016

Deputy Upper Tribunal Judge Norton-Taylor