



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

Appeal Number: HU094542015

THE IMMIGRATION ACTS

**Heard at Field House
On 28 July 2017**

**Decision &
Promulgated
On 31 July 2017**

Reasons

Before

Upper Tribunal Judge Southern

Between

GRETA GJOKA

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Harris, counsel instructed by Morgan Pearse, solicitors

For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION

1. The appellant, who is a citizen of Albania, applied for leave to remain on the basis of rights protected by article 8 of the ECHR. That application was refused by the respondent who also gave directions for her removed from the United Kingdom. The appellant's appeal against that decision came before First-tier Tribunal Judge Maxwell on 9 March 2017.

2. The judge recorded that the appellant had specifically requested that the appeal be determined on the papers without an oral hearing and said, at paragraph 2 of his determination:

“I further noted that despite having had the benefit of representation, the appellant had not taken any steps to adduce evidence in support of her appeal. Given the history of this case, which includes requests for further evidence made by the respondent prior to deciding the application; requests that were not complied with, I formed the view there was no point in adjourning the matter as the appellant had not co-operated in the past nor was there any suggestion that she might do so in the future....

The appellant has not submitted a bundle of documents nor given a detailed written response to the notice of refusal...”

Having made clear that the failure of the appellant to submit evidence was a matter to be held against her, the judge went on to explain why the appeal was dismissed, saying:

“The appellant has made no effort to establish her case... The inference must be that there is no evidence for her to provide....

...

Given the failure of the appellant to produce any evidence it is not possible to find that requiring her to leave the jurisdiction.... Would result in any unjustly harsh consequences for her or her daughter.”

And a little later, the judge said:

“In the absence of evidence, I find that the appellant has failed to prove that she meets the requirements of section 117B(6)...”

3. The difficulty is that in fact the appellant’s solicitors *had* submitted a bundle of documentary evidence to be considered in the determination of the appeal. The appellant’s solicitors have produced evidence that the bundle was signed for, as proof of receipt, by the First-tier Tribunal at 09.48 hrs on 3 March 2017 and by the HOPOU at 10.32 hrs on 6 March 2017, and as directions issued by the Tribunal required any documentary evidence relied upon to be provided by 8th March, that evidence was provided in time and the appellant was entitled to see that it would be considered.
4. Permission to appeal having been granted, the matter was considered by Upper Tribunal Judge Rintoul who gave the following directions on 18 April 2017:

“It is my preliminary view that, through no fault of the judge, a procedural error has occurred which amounts to an error of law; and accordingly, that the decision of the First-tier Tribunal should be set aside and remitted to the First-tier Tribunal for a fresh decision on all issues.

Unless either party objects to this course of action in writing within 5 working days, the Upper Tribunal will allow the appellant’s appeal on the above basis, and remit the decision to the First-tier Tribunal.”

5. The only communication in fact received after that was a rule 24 letter from the respondent in which it was said that the appellant’s appeal would be opposed because the respondent has not seen any evidence that the appellant’s bundle had in fact been submitted as asserted. And so the appeal now comes before me.
6. Having examined the Tribunal’s file and having had regard to all that has been said, I am entirely satisfied that, unknown to the judge, the appellant’s solicitors had indeed submitted the bundle and that this should have been put before the judge. As it was not, there has been a procedural irregularity giving rise to unfairness such to establish that the determination of this appeal discloses an error of law material to the outcome. Therefore, the decision of the judge is set aside and the appeal to the Upper Tribunal is allowed to the extent that the appeal will be remitted to the First-tier Tribunal to be determined afresh.

Summary of decision:

7. The determination of this appeal discloses a material error of law error of law and the decision of First-tier Tribunal Judge Maxwell is set aside.
8. The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern

Date: 28 July 2017