



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA055672016

THE IMMIGRATION ACTS

Heard at Glasgow
on 1 August 2017

Decision and Reasons Promulgated
On 03 August 2017

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**BAHRAM GHORBALOU
(Anonymity not made)**

Respondent


For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

For the Appellant: Ms K Stein, Advocate, instructed by Quinn, Martin & Langan, Solicitors

DETERMINATION AND REASONS

1. The parties are as above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The SSHD appeals against a decision by FtT Judge Beg, promulgated on 12 January 2017, purporting to allow the appellant's appeal "to the extent that it is re-considered by the respondent and a fresh decision made".
3. The case to which the Judge referred at ¶8 does not justify the outcome which she reached. Further, that case was decided under the scheme of appeal rights pre-dating their most recent amendment.

4. The statutory grounds of appeal available under s. 84 (1) of the 2002 Act as from 20 October 2014, and the obligation on the tribunal under s. 86 to determine those grounds, do not extend to an outcome such as the Judge purported to reach.
5. The Judge at ¶3 admitted a medical report as fresh evidence, and recorded the respondent's request for an adjournment. She ought next to have considered whether to grant the adjournment: if she refused it, she was obliged to decide on the evidence whether any of the statutory grounds of appeal were established; if she granted it, she should have set directions with a view to the case being listed for effective disposal. The absence of a decision either way was an error of law. It was a further error to direct the respondent to make a fresh decision, a matter not within the tribunal's jurisdiction.
6. With the agreement of both parties, the decision of the FtT is **set aside**, and further directions made as follows.
7. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
8. The member(s) of the FtT chosen to consider the case are not to include Judge Beg.
9. The relevant decision-maker of the respondent has still to consider the evidence. Accordingly, the respondent is directed to file with the FtT and copy to the appellant by 5 September 2017 a supplementary letter explaining the effect the fresh evidence is considered to have on the decision.
10. The appellant will also require time to consider matters in light of that response, so the case will be listed in the FtT for hearing on or after 1 November 2017 – preferably soon after that date, but given the circumstances and history of this case the FtT will no doubt treat sensitively any request by either side for further adjournment.
11. No anonymity direction has been requested or made.



1 August 2017
Upper Tribunal Judge Macleman