



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08172/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 8 November 2017**

**Decision & Reasons  
Promulgated  
On 15 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**E K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss L Gardner, instructed by Virgo Consultancy Services Limited

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Fowell promulgated on 2 June 2017 dismissing her appeal against the decision of the respondent made on 22 July 2016 to refuse her protection claim.
2. The appellant is a citizen of Georgia who is married to an Indian national. It is her case that she faces discrimination and persecution both as a result of being a mixed race couple and also on account of her mother's political

activities in Georgia which had caused her to flee the country (she was subsequently recognised as a refugee in the United Kingdom).

3. At the hearing before the First-tier Tribunal, the appellant's representative asked for an adjournment on the basis that the Georgian interpreter had previously translated for the appellant at her asylum interview. The appellant had identified some discrepancies between her answers and the way they had been translated particularly about an injury to her daughter being accidental. The judge took the view that an adjournment to obtain another interpreter would not assist a proper consideration of the issues [14] and that and in the event, although the appellant did challenge the answers about the injury to her daughter, no difficulty of translation arose.
4. The judge did not accept the appellant's account of what had happened to her in Georgia and dismissed her appeal.
5. The appellant sought permission to appeal on the grounds that the judge:-
  - (1) had permitted a procedural irregularity in not adjourning to permit another interpreter to be found; and
  - (2) failure to give sufficient weight to material matters.
6. On 19 June 2017 First-tier Tribunal Judge Pedro granted permission.
7. Notwithstanding the response made pursuant to Rule 24 by the respondent on 5 July 2015 and Mr Richards' submissions, I am satisfied that the decision of the First-tier Tribunal did involve the making of a procedural error capable of amounting to an error of law.
8. It is of note that it is the interpreter, according to the grounds of appeal, who drew attention to the fact that he had interpreted in the past. It is also evident that it was the appellant's case that certain matters had been mistranslated. Whilst it is clear that those allegations extended only to certain aspects of the case, the central issue was credibility. As is noted in the grounds of appeal the inconsistency in answers with regard to the child's injury were not peripheral to the decision and are set out at paragraphs 27, 52 and 53.
9. The problem in this case is twofold. First, if the interpreter had misunderstood the appellant's word in the first case, it is difficult to discern how the judge could properly have understood whether there was a mistake on the second occasion. Further, if mistakes had been made in some aspects, there may well be difficulty about other areas of the appellant's evidence. It was certainly unwise of the judge, as Mr Richards accepted, to proceed in the circumstances. Further, there was the appearance of an unfair hearing in that the appellant was expected to give evidence through somebody whose expertise she had already challenged and the interpreter was being put in a difficult position in that he would effectively have been treated as a witness. At the very least there was a conflict of interest and this should not have occurred.

10. Accordingly, I consider that a procedural error occurred amounting to a material error of law and that accordingly the matter should be set aside.
11. Given that the error in this case was the absence of a fair hearing, it is necessary for the matter to be reheard afresh. I therefore remit the matter to the First-tier Tribunal for a fresh hearing on all issues, before a judge other than First-tier Tribunal Judge Fowell.

### **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues; none of the findings of the First-tier Tribunal are preserved.
3. I maintain the anonymity order made by the First-tier Tribunal

Signed

Date 14 November 2017



Upper Tribunal Judge Rintoul