



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/09553/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25 May 2018

Decision & Reasons Promulgated  
On 6 June 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

MISS TANYA ROACH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Oyemike, Solicitor, Church Street Solicitors  
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant, a citizen of Jamaica, has permission to challenge the decision of Judge Jones of the First-tier Tribunal sent on 10 July 2017 dismissing her appeal against a decision made by the respondent on 20 October 2015 refusing leave to remain on human rights grounds.
2. The principal ground upon which the appellant relies is that the judge's conduct of the hearing was procedurally unfair in that the judge chose not to hear oral evidence from the appellant: it is submitted that "the choice of not accepting oral evidence was not agreed but imposed by the judge". The written grounds also provide what appears to

be the representative's record of what the judge said at the outset, namely "I will not be taking oral evidence and that she [sic] will be dealing with this appeal by way of submissions only". In response to a direction made by Upper Tribunal Judge Blum when granting permission, the appellant's representative served a contemporaneous note/record of the hearing: which confirmed this statement.

3. Two paragraphs of the judge's decision are especially pertinent to the case. At para 12 the judge stated:

"12. The Respondent was not represented, no written representations were submitted and no application to adjourn was made. The representative for the Appellant attended and this matter was dealt with by way of submissions only, with no witness evidence called. The submissions are on the record of proceedings.

At para 46 the judge stated:

"46. As there was a lack of claimed dependency in the Appellant's first witness statement, other than generic inferences, I adjourned the case so that a more detailed statement on this point alone could be drafted. Initially upon return, the additional statement had still not been drafted and a further adjournment had to be given. The additional statement claims the Appellant calls her brother seven days a week and visits him four times a week on his days of Dialysis on Monday, Wednesday and Friday, and on Sundays. I note that he is on three day a week dialysis. She then reverts to her own health status, stating she has had 36 minor epilepsy attacks and 3 major attacks in the last four months. There is no medical evidence to support this claim, and this is not what the medical letters state as set out in detail above. As the Appellant has tended to embellish and bolster her evidence to enhance her appeal possibilities, and provided contradictory evidence regarding her claimed cohabitation with Mr Nelson, as well as the degree and frequency of her role in the life of her brother, and also contradictorily claimed her medical position was so serious as to engage Article 3 ECHR and not able to be left on her own even overnight without another being present (a claim certainly not borne out by the NHS medical evidence), I am not persuaded that her claimed dependency between herself and her brother regarding her brother's claimed medical issues is reliable or credible."

4. Ideally, I would have wanted to have before me a response from Judge Jones to the allegations made in the grounds and to the representative's note (there was no Home Office Presenting Officer).
5. That said, I was able to locate in the file a typed summary of the proceedings. In light of what they contain, I am persuaded that there was a procedural failing amounting to an error of law. Whilst the typed summary is not free of ambiguity, two matters stand out. One is that the judge expressed to the appellant and her representatives her concern that the case came before her as a float and that she had limited time to deal

with it. The other is that although said in the context of why the judge decided to adjourn twice for a short period so that the representatives could draft an additional witness statement from the appellant, the judge herself noted that the appellant wanted to give evidence. In light of these two features, I cannot exclude that the judge imposed a decision not to hear oral evidence.

6. That may not necessarily have caused procedural unfairness if the evidence in the case was not in dispute or where the judge's reasons for dismissing the appeal did not turn on an evaluation of the appellant's credibility. However, the judge clearly did not accept the appellant's credibility. At paras 17, 22, 26, 28, 29, 31, 39, 44, 46, 47 and 54 the judge notes contradictions or other shortcomings in the evidence of the appellant, her partner and to some extent her brother. At para 33 the judge said she did not find the evidence of the appellant or her brother credible. Given the judge's wide-ranging concerns, it was a fundamental point of fairness that the judge should afford the appellant an opportunity to explain these shortcomings. In addition, the nature of the key issues in the appellant's case, which included the issue of whether the appellant and her partner had a genuine and subsisting relationship and resided together, cried out for oral examination.
7. Accordingly, I am persuaded that the decision of the judge is legally flawed by procedural unfairness. I hereby set aside her decision for material error of law. I see no alternative to the case being remitted to the First-tier Tribunal. None of the judge's findings of fact can be preserved.
8. In light of what has ensued in proceedings so far, I direct that the case be set down for a hearing of two hours, to afford the appellant and her partner the opportunity to attend to give evidence and to have their evidence tested by cross-examination. To that end it is necessary that the Home Office Presenting Officers' Unit does all it can to ensure the attendance of a Home Office Presenting Officer. If either party wishes to vary the above directions they must make a written application to the Principal Judge at Hatton Cross First-tier Tribunal.

For the above reasons:

The decision of the First-tier Tribunal Judge is set aside for material error of law.

The case is remitted to the First-tier Tribunal (not before Judge Jones).

No anonymity direction is made.

Signed:

Date: 5 June 2018



Dr H H Storey  
Judge of the Upper Tribunal