



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

Appeal Number: PA/09319/2019

THE IMMIGRATION ACTS

**Field House
On 26th February 2020**

**Decision & Reasons Promulgated
On 2nd March 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SO

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as SO. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant sought and was granted permission to appeal a decision of First-tier Tribunal Judge Perry promulgated on 19th December 2019.
2. The judge refused to adjourn the appeal hearing and dismissed the appeal against the refusal of the appellant's claim for international and human rights protection.
3. The respondent, in her Rule 24 response dated 18th February 2020 confirmed that she did not oppose the appellant's application for permission and agreed the judge failed to apply the correct legal test when considering whether to adjourn the hearing. In those circumstances the respondent took the view the appeal should be remitted to the First-tier Tribunal, no findings preserved.

4. I am satisfied the First-tier Tribunal judge failed to apply the correct test and proceeded with the hearing in error. The First-tier Tribunal judge has erred in law such that the decision taken is set aside to be remade.
5. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier Tribunal with directions or remake it for myself. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
6. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:
 - 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
7. I am satisfied that in this case not only has the appellant been deprived of a fair hearing and an opportunity to put her case but also the extent of judicial fact finding required is such that it is appropriate to remit the appeal to the First-tier Tribunal *de novo*.

Conclusions:

The making of the decision of the First-tier Tribunal did/did not involve the making of an error on a point of law.

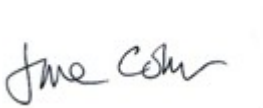
I set aside the decision and remit the appeal to the First-tier Tribunal to be heard *de novo*.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 26th February 2020



Upper Tribunal Judge Coker