



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01285/2020
(V)**

THE IMMIGRATION ACTS

**Heard at Field House by Teams
On the 27th May 2021**

**Decision & Reasons Promulgated
On the 17th June 2021**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

YAKHOUBA CONTE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Angela Conte.

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Gambia. He appealed to the First-tier Tribunal against the decision of the respondent on 8 December 2019 refusing him entry clearance as the spouse of Mrs Conte who represents him before me today. The appeal was to be determined without a hearing on the basis of the papers before the Tribunal. Judge Doyle made his decision on 27 November 2020. The papers indicate that the appeal was “heard”, but it is apparent from both the fee paid and the text of the decision itself that there was no hearing. Judge Doyle dismissed the appeal. The ground of appeal, on the basis of which permission was granted by a judge of the First-tier Tribunal, was that there was arguably a procedural error in that the decision was made before the appellant had been properly informed that the time for submitting further evidence had ended.
2. The file does not appear to be complete, and, as Mr Clarke told me, the Home Office Presenting Officers Unit also does not appear to have

complete papers. The crucial documents so far as I can see in relation to the grounds of appeal are a letter sent to Mrs Conte on 26 August 2020 by the “IAC Customer Service”, reading as follows:

“Your appeal has not listed for paper hearing. When the appeal listed for paper hearing an IA35 (Paper Submission Notice) will be sent to all parties specify the last date where supported documents need to be submitted.”

There follow three paragraphs of general advice, thanks, and an invitation to “tell us how we did today”.

3. Mrs Conte wrote back to the author of that letter saying that she did not understand it. She received the following response on 27 August 2020:

“You can send supported documents at any time of the appeal process before the appeal considered by the Immigration Judge.”

The same three paragraphs of general advice, thanks and invitation follow.

4. I take it that by “supported” in both letters, “supporting” is meant. Even with that emendation, which would not necessarily be apparent to a Tribunal user, the letters are not expressed in a clear or helpful way. It is a pity that this is the mode in which the First-tier Tribunal communicates with appellants and their representatives. Be that as it may, there is no record on the file that the letter IA35 was ever sent. As a result, the appellant’s position is that the judge’s decision came at a time when he and his wife thought there was still an opportunity to put in further submissions; and it does look as though there is material now on the file which the First-tier Tribunal Judge did not take into account.
5. In the circumstances, Mr Clarke did not resist the suggestion that the matter be redetermined by a different judge of the First-tier Tribunal.
6. In order for that to happen, I will direct as indicated at the end of this decision.
7. I set aside the decision of Judge Doyle for error of law. I direct as follows:
 1. Any further material which the appellant wishes to be considered as supporting his appeal must be sent to customer.service@justice.gov.uk so as to be received no later than two weeks after the date this decision is sent to the parties.
 2. As soon as practicable following the expiry of the time limited by the previous paragraph, the appeal to the First-tier Tribunal is to be redetermined without a hearing by a judge other than Judge Doyle.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 2 June 2021